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Government of Bengal

Legislative Department

Bengal Code

In Five Volumes

Fifth Edition

Volume I

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Bengal Regulations, Local Acts of the Governor General of India in Council, Local Acts of the Indian Legislature, Central Acts as modified in their application to Bengal, Local Acts made by the Governor General under section 67B of the Government of India Act and Regulations made under the Government of India Act, 1870, and the Government of India Act, 1935.

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1939

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PREFACE TO THE BENGAL CODE, 1939.

This, the fifth edition of the Bengal Code, is based on the last edition published between the years 1913 and 1915. It is published in five volumes and contains the following enactments, namely:—

- (1) Bengal Regulations,
- (2) Local Acts of the Governor General of India in Council and the following Central Acts as modified in their application to Bengal, namely:—
 - (a) the Court-fees Act, 1870 (VII of 1870),
 - (b) the Opium Act, 1878 (I of 1878), and
 - (c) the Indian Stamp Act, 1899 (II of 1899),
- (3) Regulations made under the Government of India Act, 1870 (33 and 34 Vict., c. 3), and the Government of India Act, 1935 (26 Geo. V., c. 2),
- (4) Local Acts of the Indian Legislature,
- (5) Local Acts made by the Governor General under section 67 B of the Government of India Act (5 and 6 Geo. V., c. 61; 6 and 7 Geo. V., c. 37; 9 and 10 Geo. V., c. 101),
- (6) Acts of the Lieutenant-Governor of Bengal in Council,
- (7) Acts of the Governor of Bengal in Council,
- (8) Acts of the Bengal Legislative Council constituted under the Government of India Act,
- (9) Acts of the Bengal Legislature constituted under the Government of India Act, 1935,
- (10) Acts of the Lieutenant-Governor of Eastern Bengal and Assam in Council,
- (11) Acts made by the Governor of Bengal under section 72 E of the Government of India Act,

which are in force in the territories comprised within the Province of Bengal, or in any part of those territories, with the exception of certain enactments which have been omitted from the Code because they—

- (a) are of a purely private character, or
- (b) are spent or obsolete, or
- (c) are purely amending Acts, other than Acts amending Central Acts which have not been printed in this Code.

The enactments contained in these volumes are printed generally as modified up to the 31st December 1938; but the amendments and repeals effected by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939) have also been taken into account in preparing the text as well as the Chronological Table.

2. The following changes have been made in reprinting the enactments contained in this Code:—

- (1) The adaptations made by the Government of India (Adaptation of Indian Laws) Order, 1937, have been included.
- (2) Over the title of each enactment the date on which it became law has been noted in brackets, as in the latest edition of the Statutes Revised.
- (3) The headings to the pages have been amplified.
- (4) Repealed matter has been omitted, explanatory notes being inserted.
- (5) Amendments have been inserted in their proper places, with explanatory foot-notes.
- (6) Where sections or clauses are in force in different forms in different parts of Bengal, they are printed in their different forms in parallel columns, the differences being, as a rule, indicated by italic type.
- (7) Several of the enactments printed in this Code are in force in other Provinces as well as in Bengal. Amendments made in these enactments which do not apply to this Province or any part thereof have, as a rule, been excluded from this Code.

- (8) Several of the enactments printed in this Code contain matter which is obviously inapplicable to Bengal, or is spent or obsolete, but has not been formally repealed therein. Such matter has in some cases been omitted, or printed in italics, an explanatory note being inserted, and has, in other cases, been printed in italics and enclosed in square brackets without any explanatory note.
- (9) Section-numbers occurring in the text have been uniformly printed in figures instead of in words.
- (10) Words belonging to Oriental languages have, as a rule, been printed in italics, and their spelling has been rendered uniform throughout.
- (11) Lengthy sections have in some instances been divided into clauses and paragraphs.
- (12) The number and year of enactments referred to in the text have been noted in the inner margin, except where both appear in the text.
- (13) A table of contents has in several cases been added.

3. My acknowledgments are due to Babu Naresh Chandra Chatterjee of the Bengal Legislative Department who has revised the present Code and has rendered valuable service in this connection.

4. Correction slips will be issued to keep this work corrected to date in accordance with current legislation.

5. Communications respecting this work may be addressed to the Legislative Department of the Government of Bengal.

E. B. H. BAKER,
Secretary to the Government of Bengal,
Legislative Department.

CALCUTTA,
March 1939.

PREFACE TO THE BENGAL CODE, VOLUME I.

Volume I of the Bengal Code has been divided into four parts as follows:—

Part I.—Bengal Regulations.

Part II.—Local Acts of the Governor General of India in Council, Local Acts of the Indian Legislature and the following Central Acts as modified in their application to Bengal, namely :—

- (a) the Court-fees Act, 1870 (VII of 1870),
- (b) the Opium Act, 1878 (I of 1878), and
- (c) the Indian Stamp Act, 1899 (II of 1899).

Part III.—Local Acts made by the Governor General under section 67 B of the Government of India Act.

Part IV.—Regulations made under the Government of India Act, 1870, and the Government of India Act, 1935.

E. B. H. BAKER,

*Secretary to the Government of Bengal,
Legislative Department.*

CALCUTTA,
March 1939.

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PRINTED IN THIS VOLUME.**

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*No number was given to this Act.

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The Bengal Code

Volume I

PART I.—BENGAL REGULATIONS IN FORCE IN THE PROVINCE OF BENGAL.

Bengal Regulation I of 1793

(The Bengal Permanent Settlement Regulation, 1793.)

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Bengal Regulation I of 1793

(The Bengal Permanent Settlement Regulation, 1793.)¹

(1st May 1793.)

A Regulation for enacting into a Regulation certain Articles of a Proclamation bearing date the 22nd March, 1793.

1. The following articles of the Proclamation relative to the limitation of the public demand upon the lands, addressed by the Governor General in Council to the *zamindars*, independent *talukdars* and other actual proprietors of land paying revenue to Government, in the Provinces of Bengal, [*Bihar and Orissa*,] are hereby enacted into a Regulation, which is to have force and effect from the 22nd March, 1793, the date of the Proclamation. Preamble.

Proclamation.

2. *Article I.*—In the original Regulations for the decennial settlement of the public revenues of Bengal, [*Bihar and Orissa*,] passed for those Provinces, respectively, on the 18th September, 1789, [*the 25th November, 1789, and the 10th February, 1790*,] it was notified to the proprietors of land, with or on behalf of whom a settlement might be concluded, that the *jama* assessed upon their lands under those Regulations would be continued after the expiration of the ten years, and remain unalterable for ever, provided such continuance should meet with the approbation of the Honourable Court of Directors for the affairs of the East India Company, and not otherwise. Decennial settlement declared conditionally permanent by original Regulations.

¹Short title.—This short title was given by the Amending Act, 1897 (V of 1897).

Local Extent.—This Regulation was passed for the whole of the former Province of Bengal—*see* ss. 1 to 3.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), section 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), section 3, to be in force in West Jalpaiguri, in the district of Jalpaiguri.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), section 4 (2).

The Bengal Permanent Settlement

[Ben. Reg. I]

(Secs. 3—5.)

Power to declare
jama assessed
lands under

Regulations,
fixed for ever.

Jama upon lands
of proprietors
with whom
settlement
concluded,
fixed for ever.

Jama hereafter
agreed to by
proprietors
whose lands are
held *Khas*, or let
in farm, fixed
for ever.

3. *Article II.*—The Marquis Cornwallis, Knight of the Most Noble Order of the Garter, Governor General in Council, now notifies to all *zamindars*, independent *talukdars* and other actual proprietors of land paying revenue to Government, in the provinces of Bengal, [*Bihar and Orissa*,] that he has been empowered by the Honourable Court of Directors for the affairs of the East India Company to declare the *jama*, which has been or may be assessed upon their lands under the Regulations above-mentioned, fixed for ever.

4. *Article III.*—The Governor General in Council¹ accordingly declares to the *zamindars*, independent *talukdars* and other actual proprietors of land with or on behalf of whom a settlement has been concluded under the Regulations above-mentioned, that at the expiration of the term of the settlement no alteration will be made in the assessment which they have respectively engaged to pay, but that they and their heirs and lawful successors will be allowed to hold their estates at such assessment for ever.

5. *Article IV.*—The lands of some *zamindars*, independent *talukdars* and other actual proprietors of land, having been held *khas*, or let in farm, in consequence of their refusing to pay the assessment required of them under the Regulations above-mentioned, the Governor General in Council¹ now notifies to the *zamindars*

VOLUME I.

Corrigenda.

Pages 4 and 6.—

In foot-notes 1 and 2, respectively, for “Schedule IV” read “Schedule XIV”.

[No. 2, dated the 12th February 1940.]

and he declares to the *zamindars*, independent *talukdars* and other actual proprietors of land, whose lands have been let in farm, that they shall not regain possession of their lands before the expiration of the period for which they have been farmed (unless the farmers shall voluntarily consent to make over to them the remaining term of their lease, and the Governor General in Council¹ shall approve of the transfer), but that at the expiration of that period, upon their agreeing to the

¹ After the commencement of Part III of the Government of India Act, 1935, the references to the “Governor General in Council” are to be construed as references to the “Provincial Government” —see Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1793.]

(Secs. 6, 7.)

payment of the assessment which may be required of them, they shall be reinstated, and that no alteration shall afterwards be made in that assessment, but that they, and their heirs and lawful successors, shall be allowed to hold their respective estates at such assessment for ever.

6. *Article V.*—In the event of the proprietary right in lands that are, or may become, the property of Government being transferred to individuals, such individuals, and their heirs and lawful successors, shall be permitted to hold the lands at the assessment at which they may be transferred for ever.

Jama of lands belonging to Government, but transferred to individuals, fixed for ever.

7. *Article VI.*—It is well known to the *zamindars*, independent *talukdars* and other actual proprietors of land, as well as to the inhabitants of Bengal, [*Bihar and Orissa*,] in general, that from the earliest times until the present period the public assessment upon the land has never been fixed, but that, according to established usage and custom, the rulers of these provinces have from time to time demanded an increase of assessment from the proprietors of land; and that, for the purpose of obtaining this increase, not only frequent investigations have been made to ascertain the actual produce of their estates, but that it has been the practice to deprive them of the management of their lands, and either to let them in farm, or to appoint officers on the part of Government to collect the assessment immediately from the *rai-yats*.

Assessment in former times liable to variation at discretion of Government.

The Honourable Court of Directors, considering these usages and measures to be detrimental to the prosperity of the country, have, with a view to promote the future ease and happiness of the people, authorized the foregoing declarations; and the *zamindars*, independent *talukdars* and other actual proprietors of land, with or on behalf of whom a settlement has been or may be concluded, are to consider these orders fixing the amount of the assessment as irrevocable, and not liable to alteration by any persons whom the Court of Directors may hereafter appoint to the administration of their affairs in this country.

Motives of Court of Directors for abolishing usage and fixing assessment.

The Governor General in Council¹ trusts that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves in the cultivation of their lands, under the certainty that they will enjoy exclusively the fruits of their own good management and industry, and that no demand will ever be made upon them, or their heirs or successors, by the present or any

Proprietors expected to improve estates.

¹See foot-note 1 on p. 4, *ante*.

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[Ben.]

(Sec. 8.)

future Government, for an augmentation of the public assessment in consequence of the improvement of their respective estates.

Conduct to be observed by proprietors towards dependent *talukdars* and *rai-yats*.

To discharge the revenues at the stipulated periods without delay or evasion and to conduct themselves with good faith and moderation towards their dependent *talukdars* and *rai-yats*, are duties at all times indispensably required from the proprietors of land, and a strict observance of those duties is now more than ever incumbent upon them, in return for the benefits which they will themselves derive from the orders now issued.

The Governor General in Council¹ therefore expects that the proprietors of land will not only act in this manner themselves towards their dependent *talukdars* and *rai-yats*, but also enjoin the strictest adherence to the same principles in the persons whom they may appoint to collect the rents from them.

No claims for remissions or suspensions.

He further expects that, without deviating from this line of conduct, they will regularly discharge the revenue in all seasons; and he accordingly notifies to them, that, in future, no claims or application for suspensions or remissions, on account of drought, inundation or other calamity of seasons, will be attended to, but that in the event of any *zamindar*, independent *talukdar* or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, or his or her heirs or successors, failing in the punctual discharge of the public revenue which has been or may be assessed upon their lands under the above-mentioned Regulations, a sale of the whole of the lands of the defaulter, or such portion of them as may be sufficient to make good the arrear, will positively and invariably take place.

Sale of lands for arrears.

8. *Article VII.*—To prevent any misconstruction of the foregoing articles the Governor General in Council¹ thinks it necessary to make the following declarations to the *zamindars*, independent *talukdars* and other actual proprietors of land:—

Regulations for protection of *rai-yats*, etc.

First.—It being the duty of the ruling power to protect all classes of people and more particularly those who from their situation are most helpless, the Governor General in Council¹ will, whenever he may deem it proper, enact such Regulations² as he may think

¹See foot-note 1 on p. 4, *ante*.

²After the commencement of Part III of the Government of India Act, 1935, references to the making or adoption of Regulations by the Governor General in Council are to be construed as references to the passing of Acts of the Provincial Legislature—see Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Regulation. 1793.

of 1793.]

(Sec. 8.)

necessary for the protection and welfare of the dependent *talukdars*, *raiyats* and other cultivators of the soil; and no *zamindar*, independent *talukdar* or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay.

Second.—The Governor General in Council¹ having, on the 28th July, 1790, directed the *sáir* collections to be abolished, a full compensation was granted to the proprietors of land for the loss of revenue sustained by them in consequence of this abolition; and he now declares that, if he should hereafter think it proper to re-establish the *sáir* collections or any other internal duties, and to appoint officers on the part of Government to collect them, no proprietor of land will be admitted to any participation thereof, or be entitled to make any claims for remissions of assessment on that account.

Right of Government to all internal duties,

Third.—The Governor General in Council¹ will impose such assessment as he may deem equitable on all lands at present alienated and paying no public revenue which have been or may be proved to be held under illegal or invalid titles.

and to *jama* on alienated lands.

The assessment so imposed will belong to Government and no proprietor of land will be entitled to any part of it.

Fourth.—The *jama* of those *zamindars*, independent *talukdars* and other actual proprietors of land, which is declared fixed in the foregoing articles, is to be considered entirely unconnected with, and exclusive of, any allowances which have been made to them in the adjustment of their *jama*, for keeping up *thanas* or police establishments, and also of the produce of any lands which they may have been permitted to appropriate for the same purpose, and the Governor General in Council¹ reserves to himself the option of resuming the whole or part of such allowances, or produce of such lands, according as he may think proper in consequence of his having exonerated the proprietors of land from the charge of keeping the peace, and appointed officers on the part of Government to superintend the police of the country.

Resumption of police allowances to proprietors.

The Governor General in Council¹, however, declares that the allowances or produce of lands which may be resumed will be appropriated to no other purpose but that of defraying the expense of the police; and that instructions will be sent to the Collectors not to

¹See foot-note 1 on p. 4, *ante*.

(Sec. 9.)

add such allowances, or the produce of such lands, to the *jama* of the proprietors of land, but to collect the amount from them separately.

Estates of
disqualified
proprietors
not liable to
sale for

Fifth.—Nothing contained in this proclamation shall be construed to render the lands of the several descriptions of disqualified proprietors, specified in the first Article of the Regulations regarding disqualified landholders, passed on the 15th July, 1791, liable to sale for any arrears which have accrued or may accrue on the fixed *jama* that has been or may be assessed upon their lands under the above-mentioned Regulations for the decennial settlement: provided that such arrears have accrued or may accrue during the time that they have been or may be dispossessed of the management of their lands under the said Regulations of the 15th July, 1791.

It is to be understood, however, that whenever all or any of the descriptions of disqualified landholders, specified in the first Article of the last-mentioned Regulations, shall be permitted to assume or retain the management of their lands, in consequence of the ground of their disqualification no longer existing, or of the Governor General in Council¹ dispensing with, altering or abolishing those Regulations, the lands of such proprietors will be held responsible for the payment of the fixed *jama* that has been or may be assessed thereon, from the time that the management may devolve upon them, in the same manner as the lands of all actual proprietors of land who are declared qualified for the management of their estates, and also of all actual proprietors who are unqualified for such management, by natural or other disabilities, but do not come within the descriptions of disqualified landholders specified in the first Article of the Regulations of the 15th July, 1791, are and will be held answerable, for any arrears that are or may become due from them, on the fixed *jama* which they, or any persons on their behalf, have engaged or may engage to pay, under the above-mentioned Regulations, for the decennial settlement.

Proprietors
may transfer
lands without
sanction of
Government.

9. *Article VIII.*—That no doubt may be entertained whether proprietors of land are entitled, under the existing Regulations, to dispose of their estates without the previous sanction of Government, the Governor General in Council¹ notifies to the *zamindars*, independent *talukdars* and other actual proprietors of land that they are privileged to transfer to whomsoever they may think proper, by sale, gift or otherwise, their proprietary rights in the whole or any portion of their respective

¹See foot-note 1 on p. 4, *ante*.

of 1793.]

(Sec. 10.)

estates, without applying to Government for its sanction to the transfer, and that all such transfer will be held valid:

Provided that they be conformable to the Muhammadan or the Hindu laws (according as the religious persuasions of the parties to each transaction may render the validity of it determinable by the former or the latter Code), and that they be not repugnant to any Regulations now in force, which have been passed by the British administrations, or to any Regulations¹ that they may hereafter enact. Proviso.

10. Article IX.—From the limitation of the public demand upon the lands, the net income, and consequently the value (independent of increase of rent obtainable by improvements), of any landed property, for the assessment on which a distinct engagement has been or may be entered into, between Government and the proprietor, or that may be separately assessed, although included in one engagement with other estates belonging to the same proprietor, and which may be offered for public or private sale entire, will always be ascertainable by a comparison of the amount of the fixed *jama* assessed upon it (which, agreeable to the foregoing declarations, is to remain unalterable for ever, to whomsoever the property may be transferred), with the whole of its produce, allowing for the charges of management.

Rules for apportioning fixed *jama* on portions of estates in event of sale or transfer, and on shares of estates.

But it is also essential that a notification should be made of the principles upon which the fixed assessment charged upon any such estate will be apportioned on the several divisions of it, in the event of the whole of it being transferred by public or private sale, or otherwise, in two or more lots, or of a portion of it being transferred in one, or in two or more lots, or of its being joint property, and a division of it being made amongst the proprietors; otherwise, from the want of a declared rule for estimating the proportion of the fixed *jama* with which the several shares would be chargeable in such cases, the real value of each share would be uncertain, and consequently the benefits expected to result from fixing the public assessment upon the lands would be but partially obtained.

The Governor General in Council² has accordingly prescribed the following rules for apportioning the fixed assessments in the several cases above-mentioned; but as Government might sustain a considerable loss of revenue by disproportionate allotments of the assessment were the apportioning of it, in any of the cases above

¹See foot-note 2 on p. 6, *ante*.

²See foot-note 1 on p. 4, *ante*.

(Sec. 10.)

specified, to be left to the proprietors, he requires that all such transfers or divisions as may be made by the private act of the parties themselves be notified to the Collector of the revenue of the *zila* in which the lands may be situated, or such other officer as Government may in future prescribe, in order that the fixed *jama*, assessed upon the whole estate, may be apportioned on the several shares in the manner hereafter directed, and that the names of the proprietors of each share and the *jama* charged thereon may be entered upon the public registers, and that separate engagements for the payment of the *jama* assessed upon each share may be executed by the proprietors, who will thenceforward be considered as actual proprietors of land.

And the Governor General in Council¹ declares that, if the parties to such transfers or divisions shall omit to notify them to the Collector of the revenue of the *zila* or such other officer as may be hereafter prescribed, for the purposes before-mentioned, the whole of such estate will be held responsible to Government for the discharge of the fixed *jama* assessed upon it, in the same manner as if no such transfer or division had ever taken place.

The Governor General in Council¹ thinks it necessary further to notify, in elucidation of the declarations contained in this Article (which are conformable to the principles of the existing Regulations), that if any *zamindar*, independent *talukdar* or other actual proprietor of land shall dispose of a portion of his or her lands as a dependent *taluk*, the *jama* which may be stipulated to be paid by the dependent *talukdar* will not be entered upon the records of Government, nor will the transfer exempt such lands from being answerable, in common with the remainder of the estate, for the payment of the public revenue assessed upon the whole of it, in the event of the proprietor, or his or her heirs or successors, falling in arrear from any cause whatever, nor will it be allowed, in any case, to affect the rights or claims of Government, any more than if it had never taken place.

First.—In the event of the whole of the lands of a *zamindar*, independent *talukdar* or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, under the Regulations above-mentioned, being exposed to public sale by the order of the Governor General in Council¹, for the discharge of arrears of assessment, or in consequence of the decision of a Court of Justice, in two or more lots, the assessment upon each lot shall be fixed at an amount

¹See foot-note 1 on p. 4, *ante*.

of 1793.]

(Sec. 10.)

which shall bear the same proportion to its actual produce as the fixed assessment upon the whole of the lands sold may bear to the whole of their actual produce.

This produce shall be ascertained in the mode that is or may be prescribed by the existing Regulations, or such other Regulations¹ as the Governor General in Council² may hereafter adopt, and the purchaser or purchasers of such lands, and his or her or their heirs and lawful successors, shall hold them at the *jama* at which they may be so purchased, for ever.

Second.—When a portion of the lands of a *zamindar*, independent *talukdar* or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, under the Regulations before-mentioned, shall be exposed to public sale, by order of the Governor General in Council², for the liquidation of arrears of assessment, or pursuant to the decision of a Court of Justice, the assessment upon such lands, if disposed of in one lot, shall be fixed at an amount which shall bear the same proportion to their actual produce as the fixed assessment upon the whole of the lands of such proprietor, including those disposed of, may bear to the whole of their actual produce.

If the lands sold shall be disposed of in two or more lots, the assessment upon each lot shall be fixed at an amount which shall bear the same proportion to its actual produce as the fixed assessment upon the whole of the lands of such proprietor, including those sold, may bear to the whole of their actual produce.

The actual produce of the whole of the lands of such proprietor, whether the portion of them which may be sold be disposed of in one or in two or more lots, shall be ascertained in the mode that is or may be prescribed by the existing Regulations, or such other Regulations¹ as the Governor General in Council² may hereafter enact, and the purchaser or purchasers of such lands, and his or her or their heirs or successors, will be allowed to hold them at the *jama* at which they may be so purchased, for ever: and the remainder of the public *jama*, which will consequently be payable by the former proprietor of the whole estate, on account of the portion of it that may be left in his or her possession, will continue unalterable for ever.

Third.—When a *zamindar*, independent *talukdar* or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, shall transfer

¹See foot-note 2 on p. 6, *ante*.

²See foot-note 1 on p. 4, *ante*.

(Sec. 11.)

the whole of his or her estate, in two or more distinct portions, to two or more persons, or a portion thereof to one person, or to two or more persons in joint property, by private sale, gift or otherwise, the assessment upon each distinct portion of such estate so transferred shall be fixed at an amount which shall bear the same proportion to its actual produce as the assessment upon the whole of the estate of the transferring proprietor, of which the whole or a portion may be so transferred, may bear to the whole of its actual produce.

This produce shall be ascertained in the mode that is or may be prescribed in the existing Regulations, or such other Regulations¹ as Government may hereafter adopt, and the person or persons to whom such lands may be transferred, and his or her or their heirs and lawful successors, shall hold them at the *jama* at which they may be so transferred, for ever: and where only a portion of such estate shall be transferred, the remainder of the public *jama* which will consequently be payable by the former proprietor of the whole estates² on account of the lands that may remain in his or her possession shall be continued unalterable for ever.

Fourth.—Whenever a division shall be made of lands, the settlement of which has been or may be concluded with or on behalf of the proprietor or proprietors, and that are or may become the joint property of two or more persons, the assessment upon each share shall be fixed at an amount which shall bear the same proportion to its actual produce as the fixed *jama* assessed upon the whole of the estate divided may bear to the whole of its actual produce.

This produce shall be ascertained in the mode that is or may be prescribed by the existing Regulations or such other Regulations³ as the Governor General in Council⁴ may hereafter adopt, and the sharers, and their heirs and lawful successors, shall hold their respective shares at the *jama* which may be so assessed upon them, for ever.

Adjusting
jama of lands
held *khas* or
let in farm.

“11. Article X.—The following rules are prescribed respecting the adjustment of the assessment on the lands of *zamindars*, independent *talukdars* and other actual

¹See foot-note 2 on p. 6. *ante*.

²*Sic.* in Clarke.

³See foot-note 1 on p. 4. *ante*.

⁴The application of s. 11 is extended by the Bengal Inheritance Regulation, 1793 (XI of 1793), s. 4.

So much of s. 11 as relates to the adjustment of the Government *jama* on lands exposed to public sale in satisfaction of decrees was repealed by Act IV of 1846, s. 1.

of 1793.]

(Sec. 11.)

proprietors of land, whose lands are or may be held *khas* or let in farm in the event of their being disposed of by public sale, or transferred, by any private act of the proprietor, or of their being joint property, and a division of them taking place amongst the proprietors.

First.—If the whole, or a portion of the lands of a *zamindar*, independent *talukdar* or other actual proprietor of land who may not have agreed to the payment of the assessment proposed to him or her under the Regulations above-mentioned, and whose lands are or may be held *khas* or let in farm, shall be exposed to public sale in one or in two or more lots (pursuant to the decree of a Court of Justice), such lands, if *khas*, shall be disposed of at whatever assessment the Governor General in Council¹ may deem equitable, and the purchaser or purchasers of such lands, and his or her or their heirs and lawful successors, shall hold the lands at the assessment at which they may be so purchased, for ever.

If the lands, at the time of their being exposed to sale, shall be held in farm, and shall be put up in one or in two or more lots, they shall be disposed of under the following conditions:—

The purchaser or purchasers shall receive, during the unexpired part of the term of the lease of the farmer, whatever such proprietor shall have been entitled to receive, in virtue of his or her proprietary rights, on account of the land so purchased, and such purchaser or purchasers shall engage to pay, at the expiration of the lease of the farmer, such assessment on account of the lands as Government may deem equitable.

The sum to be received by the purchaser or purchasers during the unexpired part of the term of the lease of the farmer, and the *jama* to be paid by such purchaser or purchasers after the expiration of the lease, shall be specified at the time of the sale, and such purchaser or purchasers, and his or her or their heirs and lawful successors, shall be allowed to hold the lands at the assessment at which they may be so purchased, for ever.

Second.—If a *zamindar*, independent *talukdar* or other actual proprietor of land, whose lands are or may be held *khas* or let in farm, shall transfer by private sale, gift or otherwise, the whole or a portion of his or her lands in one or in two or more lots, the person or persons to whom the lands may be so transferred shall be entitled to receive from Government (if the lands are

¹See foot-note 1 on p. 4, *ante*.

[Ben. Reg. I of 1793.]

(Sec. 11.)

held *khas*), or from the farmer (if the lands are let in farm), the *malikana* to which the former proprietor was entitled on account of the land so transferred.

Persons to whom such lands may be so transferred will stand in the same predicament as the *zamindars*, independent *talukdars* or other actual proprietors of land mentioned in the fourth Article, whose lands are held *khas*, or have been let in farm, in consequence of their refusing to pay the assessment required of them under the before-mentioned Regulations for the decennial settlement; and the declarations contained in that Article are to be held applicable to them.

Third.—In the event of a division being made of lands that are, or may become the joint property of two or more persons, and which are or may be held *khas* or let in farm, the proprietors of the several shares will stand in the same predicament, with regard to their respective shares, as the *zamindars*, independent *talukdars* and other actual proprietors of land specified in the fourth Article, whose lands have been let in farm or are held *khas* in consequence of their having refused to pay the assessment required of them under the before-mentioned Regulations for the decennial settlement; and the declarations contained in that Article are to be considered applicable to them.

Bengal Regulation II of 1793

(THE BENGAL LAND-REVENUE REGULATION, 1793.)

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Bengal Regulation II of 1793

(The Bengal Land-revenue Regulation, 1793.)¹

(1st May 1793.)

A Regulation for abolishing the Courts of Mal Adalat or Revenue Courts, and transferring the trial of the suits which were cognizable in those Courts to the Courts of Diwani Adalat; and prescribing Rules for the conduct of the Board of Revenue and the Collectors.

1. In the British territories in Bengal the greater part of the materials required for the numerous and valuable manufactures, and most of the other principal articles of export, are the produce of the lands: it follows that the commerce, and consequently the wealth of the country, must increase in proportion to the extension of its agriculture. Preamble.

But it is not for commercial purposes alone that the encouragement of agriculture is essential to the welfare of these provinces.

The Hindus, who form the body of the people, are compelled, by the dictates of religion, to depend solely upon the produce of the lands for subsistence; and the generality of such of the lower orders of the natives as are not of that persuasion are, from habit or necessity, in a similar predicament.

The extensive failure or destruction of the crops that occasionally arises from drought or inundation is in

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the former Province of Bengal—*see* paragraph 1 of the Preamble.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), section 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), section 3, to be in force in West Jalpaiguri, in the district of Jalpaiguri.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), section 4(2).

PARTIAL REPEAL.—So much of this Regulation as requires the appointment of *diwans* in the different districts, or defines the duties of the *diwans*, or relates in any other manner, directly or indirectly, to those offices, was repealed by Bengal Regulation XV of 1813. Specific references in the Regulation to *diwans* were repealed by the Repealing Act, 1874 (XVI of 1874), and have been omitted.

(Sec. 1.)

consequence invariably followed by famine, the ravages of which are felt chiefly by the cultivators of the soil and the manufacturers, from whose labours the country derives both its subsistence and wealth.

Experience having evinced that adequate supplies of grain are not obtainable from abroad in seasons of scarcity, the country must necessarily continue subject to these calamities until the proprietors and cultivators of the lands shall have the means of increasing the number of the reservoirs, embankments and other artificial works, by which, to a great degree, the untimely cessation of the periodical rains may be provided against, and the lands protected from, inundation; and as a necessary consequence the stock of grain in the country at large shall always be sufficient to supply those occasional, but less extensive, deficiencies in the annual produce which may be expected to occur notwithstanding the adoption of the above precautions to obviate them.

To effect these improvements in agriculture, which must necessarily be followed by the increase of every article of produce, has accordingly been one of the primary objects to which the attention of the British Administration has been directed in its arrangements for the internal government of these provinces.

As being the two fundamental measures essential to the attainment of it, the property in the soil has been declared to be vested in the landholders, and the revenue payable to Government from each estate has been fixed for ever.

These measures have at once rendered it the interest of the proprietors to improve their estates, and given them the means of raising the funds necessary for that purpose.

The property in the soil was never before formally declared to be vested in the landholders, nor were they allowed to transfer such rights as they did possess, or raise money upon the credit of their tenures, without the previous sanction of Government.

With respect to the public demand upon each estate, it was liable to annual or frequent variation at the discretion of Government.

The amount of it was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the *raiyats* or tenants for each *bigha* of land in cultivation, of which, after deducting the expenses of collection, ten-elevenths were usually considered as the right of the public and the remainder the share of the landholder.

of 1793.]

(Sec. 1.)

Refusal to pay the sum required of him was followed by his removal from the management of his lands, and the public dues were either let in farm or collected by an officer of Government, and the above-mentioned share of the landholder, or such sum as special custom, or the orders of Government, might have fixed, was paid to him by the farmer or from the public treasury.

When the extension of cultivation was productive only of a heavier assessment, and even the possession of the property was uncertain, the hereditary landholder had little inducement to improve his estate, and moneyed men had no encouragement to embark their capital in the purchase or improvement of land, whilst not only the profit, but the security for the capital itself, was so precarious.

The same causes, therefore, which prevented the improvement of land depreciated its value.

Further measures, however, are essential to the attainment of the important object above stated.

All questions between Government and the landholders respecting the assessment and collection of the public revenue, and disputed claims between the latter and their *raiyats*, or other persons concerned in the collection of their rents, have hitherto been cognizable in the Courts of *Mál Adálat* or Revenue Courts.

The Collectors of the Revenue preside in these Courts as Judges, and an appeal lies from their decision to the Board of Revenue, and from the decrees of that Board to the Governor General in Council in the Department of Revenue.

The proprietors can never consider the privileges which have been conferred upon them as secure, whilst the Revenue-officers are vested with these judicial powers.

Exclusive of the objections arising to these Courts from their irregular, summary, and often *ex parte* proceedings, and from the Collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties, it is obvious that, if the Regulations for assessing and collecting the public revenue are infringed, the Revenue-officers themselves must be the aggressors, and that individuals who have been wronged by them in one capacity can never hope to obtain redress from them in another.

Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants.

Other security, therefore, must be given to landed property and to the rights attached to it before the

(Secs. 2, 3.)

desired improvements in agriculture can be expected to be effected.

Government must divest itself of the power of infringing, in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders.

¹The Revenue-officers must be deprived of their judicial powers.

All financial claims of the public, when disputed under the Regulations, must be subjected to the cognizance of Courts of Judicature, superintended by Judges who, from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants.

The Collectors of the Revenue must not only be divested of the power of deciding upon their own acts, but rendered amenable for them to the Courts of Judicature, and collect the public dues subject to a personal prosecution for every exaction exceeding the amount which they are authorized to demand on behalf of the public, and for every deviation from the Regulations prescribed for the collection of it.

No power will then exist in the country by which the rights vested in the landholders by the Regulations can be infringed or the value of landed property affected.

Land must, in consequence, become the most desirable of all property, and the industry of the people will be directed to those improvements in agriculture which are as essential to their own welfare as to the prosperity of the State.

The following rules, being the rules passed for the guidance of the Collectors and the Board of Revenue, on the 8th June, 1787, and the 25th April, 1788, with alterations adapted to the principles above stated, have been accordingly enacted.

2. [*Abolition of Courts of Mal Adalat.*] *Rep. by the Repealing Act, 1873 (XII of 1873).*

3. The collection of the revenue payable to Government from the estates in each *zila* is to be committed, as heretofore, to a civil covenanted servant of the Company, who is to be styled Collector of the Revenue of the *zila* to which he may be appointed * * * * *

Collectors of
Revenue.

¹This clause, and some of the preceding clauses of this preamble, are obsolete, in consequence of the repeal of parts of this Regulation by later enactments.

²The second sentence of s. 3, as to oaths, which was repealed by the Repealing Act, 1873 (XII of 1873), is omitted.

of 1793.]

(Secs. 4—8.)

4. The Collectors are to correspond with the Board of Revenue, and to conform of all instructions with which they have been furnished by that Board, and that are or may not be altered or revoked by this or any other Regulation ¹* * *, and also to all instructions which the Board of Revenue may hereafter transmit to them.

Collectors subject to Board of Revenue.

5. The Collectors of the several *zilas* are to use a circular seal one inch and-a-half in diameter.

Seals of Collectors.

The seals of the Collectors in Bengal [*and Orissa*] are to bear an inscription to the following effect, in the Bengal and Persian characters and languages, [*and the seals of the Collectors in Bihar a similar inscription, in the Persian character and language, and the Hindustani language and Nagri character*]: “The seal of the Collector of the *zila* of”

6. The Collectors are to keep a regular diary of their official transactions, either in the English, Persian or Bengali language, recording and attesting them with their official signature at the time they may take place.

Collectors to keep diary.

7. The duties prescribed in the following section are to be performed by the Collectors, under the superintendence of the Board of Revenue.

Duties of Collectors.

8. *First*.—To collect the amount of the fixed revenue assessed upon the land of the *zamindars*, independent *talukdars* or other actual proprietors of land with or on behalf of whom a settlement has been or may be concluded.

Nature of duties.

Second.—To collect the stipulated annual revenue from the farmers of estates let in farm.

Third.—To levy the rents and revenue from estates held *khas*.

Fourth.—To make the future settlement of *khas* or farmed estates, agreeably to the regulations and instructions which they may receive for that purpose.

Fifth.—To prosecute for the recovery of the dues of Government from lands, of whatever description, held exempt from the payment of revenue under illegal or invalid tenures.

Sixth.—To pay the pensions and allowances included in the public revenue and the pensions and compensations granted in consequence of the abolition of the *sâir*.

¹The words and figures “published in the manner directed in Regulation 41, 1793,” which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

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(Secs. 9, 10.)

Seventh.—To execute the instructions which may be issued to them by the Court of Wards regarding disqualified landholders and their estates.

Eighth.—To superintend the division of landed property paying revenue to Government which may be ordered to be divided into two or more distinct estates.

Ninth.—To apportion the public revenue on lands ordered to be disposed of at public sale for the discharge of arrears of revenue.

Thirteenth.—To perform the above, and all other duties, according to the rules that have been or may be prescribed to them³ * * *.

Fourteenth.—To transmit such annual, monthly or other accounts as they now furnish, or may be hereafter required to send by the Board of Revenue, or any officer under that Board empowered to require such accounts.

Fifteenth.—To conform to all special orders that have been or may be issued to them by the Board of Revenue, or by public officers empowered to issue such orders.

Native officers
to obey orders
of Collector.

9. ⁴ * * all Native officers under the Collector are to act agreeably to his orders and such rules as he may prescribe.

Collectors not
to employ
private ser-
vants in pub-
lic matters.

10. The Collectors are prohibited from employing, directly or indirectly, their private servants, whether *banyas* or others, in the discharge of any part of their public duties, it being required that, in all matters relating to the trust committed to them, they act as the only empowered agents of Government.

³Clause *tenth* of section 8 which was repealed by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915), is omitted.

⁴Clauses *eleventh* and *twelfth* which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁵The words and figures "by any Regulation published in the manner directed in Regulation 41, 1793," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

⁶The words "The *diwan* and," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁷The second paragraph of section 9 was omitted by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1793.]

(Secs. 11—16.)

This prohibition, however, is not meant to restrict them from occasionally employing their assistants¹ * or their inferior public servants in the cases and in the manner in which they are authorized to make use of their agency.

11. [*Appointment and removal of Native cash-keepers.*] Omitted by Schedule XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

12. [*Form to be observed in issuing public money.*] Rep. by Act XXV of 1854.

13. [*Appointment and removal of Native servants.*] Omitted by Schedule XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

14. In the event of the death or removal of a Collector or of his absence from his station, the senior Assistant on the spot is to perform the duties of Collector² *, and the public officers of the Collectorship are accordingly to obey his orders. In absence of Collector, senior Assistant to officiate.

15. No Collector, Assistant³ * to a Collector, or any Native in the employ of a Collector or of an Assistant, shall hold, directly or indirectly, any farm, or be concerned on their private account in the collection or payment of the revenue of any lands in the *zila*, either as farmer, surety or otherwise; and Native officers and private servants and dependents of Collectors and Assistants are prohibited from purchasing, directly or indirectly, any land that the Collector may dispose of at public sale, under the penalty of forfeiting the property to Government, upon proof being made, to the satisfaction of the⁴ [Provincial Government], of the property having been so purchased. Collectors and their officers prohibited being concerned extra-officially in revenues.

16. The rules in the preceding section, however, are not to be considered to prohibit a⁵ * Native officer of a Collector, or any private servant of a Collector or of an Assistant, from purchasing *bonâ fide* the proprietary right in lands situated in the *zila*, by private sale. Bona fide purchases of land at private sale by Collector's officers, etc.

¹The words "or *diwans*," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words "and the *diwan*," were repealed, *ibid*.

³The words "or *diwan*" were repealed, *ibid*.

⁴These words were substituted for the words "Governor General in Council" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵The words "*diwan* or other," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

(Secs. 17—25.)

17. [*Prohibition against giving land to Europeans.*] Rep. by the Repealing Act, 1868 (VIII of 1868).

18. [*Collectors and their Assistants prohibited from trading.*] Omitted by Schedule XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

19. [*Diwans prohibited from lending money to proprietors of land.*] Rep. by the Repealing Act, 1873 (XII of 1873).

Collectors to
keep records.

20. The Collectors are to be careful that the accounts and records of their respective *zilas* are kept complete and duly preserved.

21, 22. [*Rules for rendering *zilas* compact, and prohibition against employing sepoys in collection of revenue.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

23. [*Restriction on advances of takavi.*] Rep. by the Land Improvement Act, 1871 (XXVI of 1871).

Collectors not
to exercise
authority
beyond limits
of their
zilas
without
orders.

24. The Collectors are prohibited deputing any person into the *zila* of any other Collector, or exercising any authority beyond the limits of their respective *zilas*, excepting in cases in which they may be authorized so to do ¹* * * by special orders from a competent authority.

Rule with
regard to
receipts.

25. The Collectors are to give monthly receipts for all payments of revenue into their treasuries, specifying the date or dates on which the money may be received ²* * *.

The keepers of the Native records are to keep a register of these receipts regularly numbered.

After having registered the receipts they are to attest on the face of them the date on which they may be registered.

A copy of this register is to be transmitted monthly to the Board of Revenue, or as often as that Board may require.

A similar register of receipts is to be kept by all *tahsildars*, *sazawals* or other Native officers entrusted

¹The words and figures "by a Regulation published in the manner directed in Regulation 41, 1793, or," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words "and the species of rupee in which each payment may be made," were repealed, *ibid*.

of 1793.]

(Secs. 26—33.)

with the immediate collection of the public revenue, and a copy of it is to be transmitted to the Collector monthly or as often as he may require.

26. The monthly or other receipts, for salaries, pensions or allowances, of whatever kind, which may be paid by the Collectors, are to be deposited amongst the public records of their respective *zilas*, and a register of them is to be kept by the keepers of the Native records * * * * *

Register of receipts for salaries, etc.

27. [*Collectors resigning or removed not to quit station without sanction.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

28, 29. [*Collectors to be subordinate to a Board of Revenue; its constitution.*] Rep. by the Bengal Board of Revenue Regulation, 1822 (III of 1822).

30 to 32. [*Power of Board over officers under them, and rules regarding deputations.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

33. The Board of Revenue are empowered to require the personal attendance of any proprietor or farmer of land, or any dependent *talukdar*, under-farmer or *raiyyat*, or any Native officer employed under a Collector, for the purpose of adjusting any settlement, or examining any accounts, or inquiring into any matter coming within their cognizance, provided the personal attendance of the party shall appear to them indispensably necessary.

In what case Board may require personal attendance of Natives.

In such cases the Board are to direct the Collector to serve such person with a written notice under his official seal and signature, specifying the business on account of which his attendance is judged necessary, and requiring him to attend the Board by such period as they may limit, under pain of being subject to such daily fine until he attends, or shows satisfactory cause for his non-attendance, as the Board may think proper to impose.

The Board are empowered to fine such persons neglecting to appear by the time required, in such amount as may appear to them proper upon a consideration of the case and the situation and circumstances in life of the party, and the amount of the fine shall be levied by the Collector, by the process prescribed for the recovery of arrears of revenue.

*The words "A copy of the register is to be transmitted annually to the Board of Revenue," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

(Secs. 34—41.)

But the Board of Revenue are prohibited requiring the personal attendance of any person in cases in which the business can be transacted by a *vakil*.

34, 35. [*Execution of Board's orders, and powers of Members.*] Rep. by the Bengal Board of Revenue Regulation, 1822 (III of 1822).

Powers of Board as to settlement of lands held *khas*.

36. The Board of Revenue are empowered to issue orders to their subordinate officers for making the settlement of lands that are or may be *khas*, in conformity to the Regulations and any special instructions which may be prescribed to them by the ¹[Provincial Government].

Security for payment of revenue.

37. In all cases of a settlement being made with or on behalf of *zamindars*, independent *talukdars* or other actual proprietors of land, their lands are to be deemed sufficient security for the payment of the revenue.

But, where lands are let in farm, a *málzamin*, or surety for the punctual discharge of the revenue, is to be invariably required.

Remissions.

38. No remissions upon the settlement of a preceding year, nor any remissions whatsoever, are to be granted by the Board without the sanction of the ¹[Provincial Government].

Settlements to be made by Collectors.

39. It is to be observed as a general principle that the settlement of lands that are or may be *khas* is to be made by the Collectors under the regulations and the instructions of the Board of Revenue.

But if the Board should deem a special deputation of one of their members, or of any other person, necessary to form the settlement of any such lands, they are to propose the measure to the ¹[Provincial Government] with their reasons for recommending it.

Procedure on settlement being concluded.

40. Upon a settlement being concluded with any proprietor or farmer, conformably to the Regulations, the Board of Revenue are to issue the usual *bandabasti parwana* to the proprietor or farmer, without applying to the ¹[Provincial Government] for ²[its] sanction for that purpose.

Collection of revenue.

41. The collection of the revenue is committed to the Collectors; but the Board of Revenue are to see that

¹These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The word "his", in the original text, is to be read as if the word "its" were substituted therefor—see the Amending Act, 1903 (1 of 1903).

of 1793.]

(Secs. 42—70.)

the revenues are realized by the stipulated periods, or that solid and satisfactory reasons are assigned by the Collectors for any delay or deficiency.

The power of coercion over the proprietors and farmers of land is also vested in the Collectors, as prescribed in Regulation XIV, 1793.¹

42. The Board are authorized to grant temporary suspensions of the demands of revenue whenever it may appear to them indispensably necessary, reporting the sum suspended, without delay to the ²[Provincial Government], with their reasons for the measure. But they are not to grant any suspensions beyond the current year.

Temporary suspensions.

43. No remissions of balances are to be granted without the special authority of the ²[Provincial Government].

Remissions of balances.

44. [*Accounts to be furnished to Governor General.*] Rep. by the Land Improvement Act, 1871 (XXVI of 1871).

45. The Board of Revenue are to furnish the ²[Provincial Government] with such annual, monthly or other accounts as they now are or may be required to submit to ³[it].

Duty of Board to furnish accounts, etc.

They are likewise to observe all special orders which they have received or may receive from the ²[Provincial Government].

46, 47. [*Prohibitions to be observed by Board, and acknowledgment for places restored to foreign powers.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

48. [*Separate accounts of expenses for reducing rebellious zamindars and others.*] Rep. by the Repealing Act, 1873 (XII of 1873).

49 to 70. [*Rules for conducting the business of Board, and powers of President.*] Rep. by the Bengal Board of Revenue Regulation, 1822 (III of 1822).

¹Ben. Reg. XIV of 1793 was repealed by the Repealing Act, 1874 (XVI of 1874), but this reference is saved by the proviso to that Act.

²These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The word "him", in the original text, is to be read as if the word "it" were substituted therefor—see the Amending Act, 1903 (I of 1903).

Bengal Regulation VIII of 1793

(The Bengal Decennial Settlement Regulation, 1793.)

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38. (*Omitted.*)
39. *Nānkār, khamar, nij-jot* and other private lands of proprietors in Bengal and Orissa to be annexed to the *mālguzdri* lands.
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55. Proprietors and farmers of land prohibited imposing new *abwab* or *mathal* on *raiyyats*.

[Ben. Reg. VIII of 1793.]

SECTION.

56 to 63. (*Repealed.*)64. Adjustment of *mufassal kistbandis*.

65. Bar to engagements contrary to Regulation.

66. Landholders, etc., not to interfere in matters coming within cognizance of Courts or Magistrates.

67. *First to Fourth.*—(*Repealed.*)*Fifth.*—Collector to attend to spirit of Regulation, where not applicable to particular districts.*Sixth.*—(*Repealed.*)68 to 101. (*Repealed.*)

Bengal Regulation VIII of 1793

(The Bengal Decennial Settlement Regulation, 1793.)*

(1st May 1793.)

A Regulation for re-enacting, with modifications and amendments, the rules for the Decennial Settlement of the public revenue payable from the lands of the zamindars, independent talukdars and other actual proprietors of land, in Bengal, [Bihar and Orissa], passed for those Provinces, [respectively,] on the 18th September, 1789; [the 25th November, 1789; and the 10th February, 1790,] and subsequent dates.

1 to 3. [*Re-enactment of code of rules passed on 23rd November, 1791; term of settlement; to be perpetual with approbation of Court of Directors.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

4. The settlement, under certain restrictions and exceptions hereafter specified, shall be concluded with the actual proprietors of the soil, of whatever denomination, whether *zamindars*, *talukdars* or *chaudhris*.

Settlement with whom to be concluded.

5 to 12. [*What talukdars to be actual proprietors; payment of rent through actual proprietors; what talukdars to be lease-holders; jangalbari talukdars; proprietors of malguzari aima lands; rules for guidance of Collectors; right of dissatisfied parties to sue in Court of Diwani Adalat.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

13. *Talukdars* ordered to be separated are not to be permitted to pay the revenue assessed upon their lands through the *zamindars* or other actual proprietors of estates as heretofore.

Payment of revenue by *talukdars* ordered to be separated.

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the title. It was declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6 to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

The Regulation has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4 (2).

(Secs. 14—20.)

Separated
talukdars
where to pay
revenue.

14. *Talukdars* who, in consequence of the rules in sections 5 and 9¹ may be separated from the *zamindars* or other actual proprietors of estates, through whom they heretofore paid their revenues, are to pay their revenue in future immediately into the Collector's treasury; except in districts where, from the number of *taluks*, or other cause, this mode would be attended with considerable inconvenience, in which case *tahsildars*, or Native Collectors, are to be appointed to receive the revenue of the *taluks* in such districts.

Tahsildars.

15. *Zamindars* or other actual proprietors of land, from whose *zamindaris* or estates *taluks* may be separated, shall not be appointed *tahsildars* to receive the revenue of the *taluks* so separated, but the office of *tahsildar* shall, in every instance, be given to some other person of character and responsibility, and the whole expense of it is to be defrayed by Government.

16 to 18. [Rules respecting *mukarrari* leases and *mukarraridars*.] Rep. by the Repealing Act, 1876 (XII of 1876).

Istimrardars
to be considered
as *patta*
talukdars.

19. *Istimrardars*, however, who have not got possession of their lands to the exclusion, or without the consent, of the actual proprietors, * * * but hold them of the proprietors on *patta* or lease, are to be considered as a species of *patta talukdars*, and the settlement is to be made with them as hereafter specified.

Exceptions to
general order
for conclusion
of decennial
settlement
with actual
proprietors
of soil.

20. The exceptions to the general order for the conclusion of the decennial settlement with the actual proprietors of the soil, contained in section 4, include the following descriptions of persons; females (excepting those whom the ³[Provincial Government] may judge competent to the management of their own estates), minors, idiots, lunatics or others rendered incapable of managing their lands by natural defects or infirmities of whatever nature: * * * provided, however, with regard to the whole of these descriptions, that they are not partners in the *zamindaris*, independent *taluks* or other estates held by them, with others of a different

¹Sections 5 and 9 were repealed by the Repealing Act, 1874 (XVI 1874), but this reference is saved by the proviso to that Act.

²The words and figure "as the *mukarraridars* mentioned in section 18 are supposed to have done," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

³These words were substituted for the words "Local Government" by paragraph 4 (I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The words "and persons whom the Governor General in Council may deem disqualified on account of their contumacy or notorious profligacy of character," which were repealed by Ben. Reg. VII of 1796, s. 2, are omitted.

of 1793.]

(Secs. 21—29.)

description, in which case themselves or guardians are allowed, with their partners, to engage for the settlement of their lands, and elect a joint manager, under the restrictions hereafter mentioned.

21. The lands of disqualified proprietors, coming within the above descriptions, are to be managed for the benefit of the proprietors by persons appointed to the trust by the ¹[Provincial Government] ²* * *

Management of lands of disqualified proprietors.

22. A further exception has been made to proprietors in balance to Government, and unable to pay the arrears due from them; in which instances no settlement is to be concluded with the defaulting proprietors, but their lands are to be let in farm, or held *khas*, for a period of three years, at the discretion of the Collector.

Exception as to proprietors of land in balance to Government and unable to pay arrears.

23 to 25. [*Settlement of undivided estates possessed by several proprietors; appointment of manager; when guardians of proprietors may vote in choice of manager; nomination of manager by Collector.*] Rep. by Ben. Reg. XVII of 1805.

26. The determination of the majority of the proprietors present, under the restrictions specified in section 23³, is also to be binding on the remainder, in agreeing or disagreeing to the *jama* proposed for undivided estates. The sharers, however, if dissatisfied, may obtain a division of their lands and a proportionate allotment of the revenue assessed thereon, but at their own expense.

Determination of agreement to *jama* of undivided estates.

27. When a portion of land stands in the joint names of several proprietors, or of one for many, but each proprietor has his separate share in his own possession and management, or in that of an agent for him, the settlement is to be made for each share with the person in possession, and his land is to be held exclusively responsible for the revenue assessed upon it.

Settlement of land standing in joint names of several proprietors, or of one for many.

28, 29. [*Settlement of mortgaged lands; settlement when proprietors are not forthcoming.*] Rep. by the Repealing Act, 1876 (XII of 1876).

¹See foot-note 3 on p. 32, *ante*.

²The words "in the mode prescribed in Regulation 10, 1793, which also contains rules for the selection and conduct of such managers, as well as regarding the provision to be made for the support of the proprietors," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³Section 23 was repealed by Ben. Reg. XVII of 1805.

(Secs. 30—35.)

Settlement of
disputed estates.

30. Where the property in lands is disputed, the settlement is to be made with the proprietor in possession, under an express declaration that he is nevertheless liable to the claims upon the estate, which is to be transferable to any other person to whom the property may be subsequently adjudged.

If no claimant
has been
previously in

31. If a case should occur in which none of the claimants shall have been previously in possession, they are to be allowed to appoint a manager until their claims shall have been determined in the *Diwani Adalat* of the *zila*: but, if they should not agree to a manager, the lands are to be held *khas*, and the surplus produce, after discharging the revenue, is to be kept in deposit, until the right of property shall be adjudged.

Settlement in
cases of
disputes as to
boundaries.

32. Where disputes exist concerning the boundaries of land, they are to be left to be adjusted in the *Diwani Adalat*, and the settlement is to be made in the meantime for the lands in possession of the disputing parties respectively.

33. [*Rules for fixing assessment.*] Rep. by the Amending Act, 1903 (1 of 1903).

Allowances of
kazis and
kanungos, and
public pensions,
to be added to
the *jama*.

34. The allowances of the *kazis* and *kanungos* heretofore paid by the landholders, as well as any public pensions hitherto paid through the landholders, are to be added to the amount of the *jama*, and in future paid by the Collectors of the revenue of the several *zilas*, on the part of Government, under the rules and restrictions laid down for their guidance, with regard to such payments, in the Resolutions passed by the '[Central Government]' on the 10th June, 1791, and re-enacted with modifications, by Regulation XXIV, 1793.²

Assessment
to be fixed
exclusive of
sair, with
exceptions.

35. The assessment is to be fixed exclusive and independent of all duties, taxes and other collections known under the general denomination of *sair*; the collections made in the *ganjes*, *hâts* and *bazars* situated within the limits of the town of Calcutta excepted, and excepting also the collections confirmed to the proprietors and holders of *ganjes*, *bazars* and *hâts* by the Resolutions passed by the '[Central Government]' on the 11th of June, 1790.

¹These words were substituted for the words "Governor General in Council" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²Ben. Reg. XXIV of 1793 was repealed by the Pensions Act, 1871 (XXIII of 1871).

³The second sentence of s. 35, which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

of 1793.]

(Secs. 36—41.)

36. The assessment is also to be fixed exclusive and independent of all existing *lakhiraj* lands, whether exempted from the *khiraj* (or public revenue) with or without due authority.

Also exclusive of *lakhiraj* lands.

37. The above exemption, however, is not meant to include [the *malikana* lands in Bihar, or] the *nankar*, *khamar*, *nij-jot* and other private lands of the *zamindars* and independent *talukdars* or other actual proprietors of land in Bengal and Midnapore, regarding which the following rules have been prescribed.

But not of *malikana* lands in Bihar, or other lands in Bengal and Midnapore.

38. [*Malikana* lands in Bihar to be re-annexed.]
Omitted, as being inapplicable to Bengal.

39. The *nankar*, *khamar*, *nij-jot* and other private lands appropriated by the *zamindars*, independent *talukdars* and other actual proprietors of land in Bengal [and Orissa] to the subsistence of themselves and families shall be also annexed to the *mālguzāri* lands, and the ten years' *jama* fixed upon the whole under the following modification; that such proprietors as may decline to engage for their lands be allowed the option of retaining possession of their private lands above specified, upon the terms on which they have hitherto possessed them, provided they shall prove, to the satisfaction of the Board of Revenue, that they held them under a similar tenure previous to the 12th August, 1765, the date of the grant of the *diwani* to the Company, and have hitherto been permitted to keep possession of them, whenever their *zamindaris* or estates have been held *khas* or let in farm, but not otherwise.

Nankar, *khamar*, *nij-jot* and other private lands of proprietors in Bengal and Orissa to be annexed to the *mālguzāri* lands.

In the event of such proof, and of their availing themselves of the option above given to retain possession of their private lands, a deduction, adequate to the neat produce of such lands, is to be made from the amount of the allowance fixed for excluded proprietors by section 44.¹

40. The above consolidation of the *mālguzāri* and private lands is also to be made in the *taluks* continued under the proprietors on whom they have hitherto been dependent; not, however, with a view of increasing the rents of the *talukdars*, but in order to make the whole of the lands composing their *taluks* answerable for their proportion of the public assessment allotted thereon.

Consolidation of *mālguzāri* and private lands also in certain *taluks*.

41. The *chakaran* lands, or lands held by public officers and private servants in lieu of wages, are also not meant to be included in the exception contained in

Chakaran annexed to *mālguzāri* lands.

¹Section 44 was repealed by the Repealing Act, 1874 (XVI of 1874), but this reference is saved by the proviso to that Act.

(Secs. 42—50.)

section 36. The whole of these lands in each Province are to be annexed to the *mālguzāri* lands and declared responsible for the public revenue assessed on the *zamin-daris*, independent *taluks* or other estates in which they are included, in common with all other *mālguzāri* lands therein.

42. [*Engagements for the jama to be for sicca rupees.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

Procedure in case of land-holders declining to engage for *jama* proposed to them.

43. In the event of any proprietor declining to engage for the settlement of his lands at the *jama* proposed to him, the Collector is to communicate the objections offered, with his opinion respecting them, to the Board of Revenue.

That Board is to determine the proper assessment after making such further inquiries as they may think necessary, and the objecting proprietor is to be required to engage for such assessment without further delay; and in the event of his refusal, which is to be given in writing, his lands are to be let in farm or held *khas*, as the Board of Revenue may in each instance think most expedient.

44 to 47. [*Proprietors refusing to engage for the jama to receive malikana; rules respecting payment of malikana and enforcement of payment from farmers.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

48. [*Settlement by proprietors with talukdars under them.*] Rep. by the Repealing Act, 1876 (XII of 1876).

Certain *istimrardars* not liable to increase of rent.

49. It is to be understood, however, that *istimrardars* (*mukarraridars*) of the nature of those described in section 18¹ who have held their land at a fixed rent for more than twelve years, are not liable to be assessed with any increase, either by the officers of Government or by the *zamindar* or other actual proprietor of land, should he engage for his own lands.

With regard to such *istimrardars* also as have not held their lands at a fixed rent for so long a period, if the *zamindar* or other actual proprietor of land has bound himself by the deed which he may have executed not to lay any increase upon them, he shall not be allowed to infringe the conditions of the deed for his own benefit, but must confine his demands to the rent he may have voluntarily agreed to receive.

Exception to above.

50. This last restriction imposed on the *zamindar* or other actual proprietor of land, in section 49, is not

¹Section 18 was repealed by the Repealing Act, 1876 (XII of 1876), but this reference is saved by the proviso to that Act.

of 1793.]

(Secs. 51—54.)

to be considered to preclude the officer of Government or farmer, in the event of the *zamindari* being held *khas* or let in *fauz*, from assessing such *istimrardars* according to the general rate of the district.

¹51. The following rules are prescribed to prevent undue exaction from the dependent *talukdars*:—

Rules to prevent undue exactions from *talukdars*.

First.—No *zamindar* or other actual proprietor of land shall demand an increase from the *talukdars* dependent on him, although he should himself be subject to the payment of an increase of *jama* to Government; except upon proof that he is entitled so to do, either by the special custom of the district, or by the conditions under which the *talukdar* holds his tenure; or that the *talukdar*, by receiving abatements from his *jama*, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

Second.—If, in any instance, it be proved that a *zamindar* or other actual proprietor of land exacts more from a *talukdar* than he has a right to, the Court shall adjudge him to pay a penalty of double the amount of such exaction, with all costs of suit, to the party injured.

¹52. The *zamindar* or other actual proprietor of land is to let the remaining lands of his *zamindari* or estate, under the prescribed restrictions, in whatever manner he may think proper; but every engagement contracted with under-farmers shall be specific as to the amount and conditions of it; and all sums received by any actual proprietor of land or any farmer of land, of whatever description, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted, and be repaid with a penalty of double the amount. The restrictions prescribed and referred to in this section are the following:

Power of actual proprietors to let remaining lands as they think proper.

¹53. No person contracting with a *zamindar*, independent *talukdar* or other actual proprietor, or employed by him in the management of the collections, shall be authorized to take charge of the lands or collections without an *amilnama*, or written commission, signed by such *zamindar*, independent *talukdar* or other actual proprietor.

Lands so let not to be taken charge of without *amilnama*.

¹54. The impositions upon the *raiyats*, under the denomination of *abwab*, *mathat* and other appellations,

Process to prevent imposition on *raiyats* under denomination of *abwab*, *mathat*, etc.

¹Sections 51 to 55, 64 and 65 are repealed by the Bengal Tenancy Act, 1885 (VIII of 1885), s. 2(1) in the whole of the former Province of Bengal, except the town of Calcutta, the Division of Orissa and the Scheduled Districts. The extension of the repeal to Scheduled Districts depends upon the terms of notifications extending the Act of 1885 to such districts. Under the terms of the notification extending the Act of 1885 to the Jalpaiguri district, the repeal has taken effect in that district.

(Secs. 55—64.)

from their number and uncertainty having become intricate to adjust, and a source of oppression to the *rai-yats*, all proprietors of land and dependent *talukdars* shall revise the same, in concert with the *rai-yats*, and consolidate the whole with the *assal* into one specific sum.

In large *zamindaris* or estates the proprietors are to commence this simplification of the rents of their *rai-yats* in the *parganas* where the impositions are most numerous, and to proceed in it gradually till completed; but so that it be effected for the whole of their lands by the end¹ of the Bengal year 1198 in the Bengal districts, [and of the *Fasli* and *Wilayati* year 1198 in the *Bihar* and *Orissa* districts,] these being the periods fixed for the delivery of *pattas*, as hereafter specified.

Proprietors and farmers of land prohibited imposing new *abwab* or *mathat* on *rai-yats*.

²55. No actual proprietor of land and dependent *talukdar* or farmer of land, of whatever description, shall impose any new *abwab* or *mathat* upon the *rai-yats* under any pretence whatever.

Every exaction of this nature shall be punished by a penalty equal to three times the amount imposed; and if, at any future period, it be discovered that new *abwab* or *mathat* have been imposed, the person imposing the same shall be liable to this penalty for the entire period of such impositions.

56, 57. [Variations of *pattas* according to articles of produce; what *pattas* delivered to *rai-yats* shall contain.] Rep. by the Repealing Act, 1876 (XII of 1876).

58. [Forms of *pattas*.] Rep. by the Bengal Land-revenue Sales Regulation, 1812 (V of 1812).

59, 60. [Right of *rai-yats* to demand *pattas*; existing leases to remain in force until period of expiration; restriction on cancelling *pattas* of *khudkast* *rai-yats*.] Rep. by the Repealing Act, 1876 (XII of 1876).

61. [Time allowed for delivery of *pattas* to *rai-yats*.] Rep. by the Repealing Act, 1874 (XVI of 1874).

62. [Rules regarding *patwaris*.] Rep. by the Bengal *Patwaris* Regulation, 1817 (XII of 1817), as extended by the Bengal *Kanungos* and *Patwaris* Regulation, 1819 (I of 1819).

63. [Proprietors to give receipts for rent or revenue received, and not to demand rent of absconded *rai-yats* from those who remain.] Rep. by the Repealing Act, 1874 (XVI of 1874).

³64. The proprietors of land, dependent *talukdars* and farmers of land, of every description, are to adjust the instalments of the rents receivable by them from

Adjustment of *mayasool* *kintandis*.

¹i.e., the 1st April, 1792.

²As to the local repeal of ss. 55 and 64, see foot-note 1 on p. 37, ante.

of 1793.]

(Secs. 65—101.)

their under-renters and *raiya*ts, according to the time of reaping and selling the produce, and they shall be liable to be sued for damages for not conforming to this rule.

65. No proprietor of land of dependent *talukdar* shall contract any engagement with any under-farmer, or authorize any act, contrary to the letter and meaning of this Regulation.

Bar to engagements contrary to Regulation.

66. *Zamindars*, independent *talukdars* and other actual proprietors of land, dependent *talukdars*, farmers of land holding farms immediately of Government, and all persons farming lands of the above-mentioned descriptions of landholders and farmers of land, and their respective officers, agents, servants, dependents and *raiya*ts, are prohibited from taking cognizance of, or interfering in, matters, or causes coming within the jurisdiction of the Courts of Civil Judicature, * * * or the Magistrates, under pain of being liable to the payment of such fine to Government, and damages to the party injured, as the Court of Judicature in which they may be prosecuted for the act may deem it proper to impose and award.

Landholders, etc., not to interfere in matters coming within cognizance of Courts or Magistrates.

67. *First to Fourth.* [Restrictions in the *kabuliya*ts to be in force; proprietors entitled to sell or mortgage their estates from date of settlement; rules regarding recovery of arrears from *raiya*ts; withdrawal of police jurisdiction from proprietors.] Rep. by the Repealing Act, 1876 (XII of 1876).

Fifth.—In the original rules above mentioned it was also directed that, if in any instance the Regulations should appear inapplicable to the circumstances of any particular district, the Collector should attend to the spirit of them, and carry them into execution in such mode as circumstances might allow, reporting any alterations or modifications which he might deem necessary.

Collector to attend to spirit of Regulation, where not applicable to particular districts.

This rule is to be considered still in force in forming any settlements which remain to be concluded, but it is not to be construed to empower the Collector to exercise any judicial authority.

Sixth.—[Settlement under Regulations in force prior to the original rules for the decennial settlement.] Rep. by the Repealing Act, 1876 (XII of 1876).

68 to 101. [Special orders for Bengal, Bihar, Midnapore and Salt Districts.] Rep. by the Repealing Act, 1874 (XVI of 1874).

¹As to the local repeal of s. 65, see foot-note 1 on p. 37, *ante*.

²The words "or the Courts of Circuit", which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

Bengal Regulation XI of 1793

(The Bengal Inheritance Regulation, 1793.)¹

(1st May 1793.)

A Regulation for removing certain restrictions to the operation of the Hindu and Muhammadan laws with regard to the inheritance of landed property subject to the payment of revenue to Government.

1. A custom, originating in consideration of financial convenience, was established in these Provinces under the Native Administrations, according to which some of the most extensive *zamindaris* are not liable to division. Preamble.

Upon the death of the proprietor of one of these estates it devolves entire to the eldest son, or next heir of the deceased, to the exclusion of all other sons or relations.

This custom is repugnant both to the Hindu and Muhammadan laws, which annexed to primogeniture no exclusive right of succession to landed property, and consequently subversive of the rights of those individuals who would be entitled to a share of the estates in question were the established laws of inheritance allowed to operate with regard to them as well as all other estates.

It likewise tends to prevent the general improvement of the country, from the proprietors of these large estates not having the means, or being unable to bestow the attention, requisite for bringing into cultivation the extensive tracts of waste land comprised in them.

For the above reasons, and as the limitation of the public demand upon the estates of individuals as they now exist, and the rules prescribed for apportioning the amount of it on the several shares of any estates which may be divided, obviate the objections and inconveniences that might have arisen from such divisions when the public demand was liable to annual or frequent variation, the Governor General in Council has enacted the following rules:

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was declared by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled District.

It has been declared by notification under the Scheduled District Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

(Secs. 2—4.)

Descent of
landed property
after 1st July,
1794.

2. " * * * if any *zamindar*, independent *talukdar* or other actual proprietor of land shall die without a will, or without having declared by a writing, or verbally, to whom and in what manner his or her landed property is to devolve after his or her demise, and shall leave two or more heirs, who by the Muhammadan or Hindu law (according as the parties may be of the former or latter persuasion) may be respectively entitled to succeed to a portion of the landed property of the deceased, such persons shall succeed to the shares to which they may be so entitled.

Estate how held
on death of
actual
proprietor.

3. If any *zamindar*, independent *talukdar* or other actual proprietor of land shall die " * * * without a will, or without having declared by a writing, or verbally, to whom and in what manner his or her landed property is to devolve after his or her demise, and shall leave two or more heirs, who by the Muhammadan or Hindu law (according as the parties may be of the former or latter persuasion) shall be respectively entitled to succeed to a portion of the landed property of the deceased, under the rule contained in '[section 2] such persons shall be at liberty, if they shall prefer so doing, to hold the property as a joint undivided estate.

If one or more, or all of the sharers shall be desirous of having separate possession of their respective shares, a division of the estate shall be made in the manner directed in '[the Estates Partition Act, 1876], and such sharer or sharers shall have the separate possession of such share or shares accordingly.

Ben. Act
VIII of
1876.

If there shall be three or more sharers, and any two or more of them shall be desirous of holding their shares as a joint undivided estate, they shall be permitted to keep their shares united accordingly.

Shares held
separate how

4. " * * * if any one or more of such sharers shall apply to have the separate possession of his or their

¹Words and figures as to dates, which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words and figure "subsequent to the period specified in section 2," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³This word and figure were substituted for the words "that section" by the Amending Act, 1891 (XII of 1891).

⁴These words and figures were substituted for the word and figures "Regulation 25, 1793", by the Amending Act, 1891 (XII of 1891). Ben. Act VIII of 1876 has been repealed and re-enacted by the Estates Partition Act, 1897 (Ben. Act V of 1897), and this reference should now be construed as a reference to the latter Act—see s. 2(2) thereof.

⁵The reference to Reg. VIII of 1793 which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

of 1793.]

(Sec. 5.)

share or shares, the proportion of the public *jama* charged upon the whole estate which is to be assessed upon such share or shares is to be adjusted according to the rules prescribed in section 10, Regulation 1, 1793.¹

If the estate is held *khas* or let in farm, the provisions contained in section 11, Regulation 1, 1793,¹ regarding estates so circumstanced which may be divided, will be applicable to it.

5. Nothing contained in this Regulation is to be construed to * * * prohibit any actual proprietor of land bequeathing or transferring by will, or by a declaration in writing, or verbally, either prior or subsequent to the 1st July, 1794, his or her landed estate entire to his or her eldest son or next heir, or other son or heir, in exclusion of all other sons or heirs, or to any person or persons, or to two or more of his or her heirs, in exclusion of all other persons or heirs, in the proportions, and to be held in the manner, which such proprietor may think proper :

Saving of
bequests and
transfers.

Provided that the bequest or transfer be not repugnant to any ³[laws for the time being in force], nor contrary to the Hindu or Muhammadan law; and that the bequest or transfer, whether made by a will or other writing, or verbally, be authenticated by, or made before, such witnesses, and in such manner, as those Laws ⁴* * * respectively do or may require.

¹The Bengal Permanent Settlement Regulation, 1793.

²Portions of ss. 5 and 6 which were repealed by the Repealing Act 1874 (XVI of 1874), with the effect of running the two sections into one, have been omitted.

³These words were substituted for the words "Regulations that have been or may be passed by the Governor General in Council" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The words "and Regulations" were omitted, *ibid*.

Bengal Regulation XIX of 1793

[The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.]

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Bengal Regulation XIX of 1793

[The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.]¹

(1st May 1793.)

A Regulation for re-enacting, with modifications, the rules passed by the Governor General in Council on the 1st December, 1790, for trying the validity of the titles of persons holding, or claiming a right to hold, lands exempted from the payment of revenue to Government, under grants not being of the description of those termed badshahi or royal; and for determining the amount of the annual assessment to be imposed on lands so held, which may be adjudged or become liable to the payment of public revenue.

1. By the ancient law of the country the ruling power is entitled to a certain proportion of the produce of every *bigha* of land (demandable in money or kind, according to local custom), unless it transfers its right thereto for a term or in perpetuity, or limits the public demand upon the whole of the lands belonging to an individual, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public, whilst he continues to discharge the latter. Preamble.

As a necessary consequence of this law, if a *zámindar* made a grant of any part of his lands to be held exempt from the payment of revenue, it was considered void, from being an alienation of the dues of Government without its sanction.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was declared by the Cuttack Land-revenue Regulation, 1805 (XII of 1805), ss. 17 and 24, to be in force, with modifications, in the *Parganas* of Pataspur and Bograi in the district of Midnapore in Bengal.

It was afterwards declared by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

The Regulation has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

(Sec. 1.)

Had the validity of such grants been admitted, it is obvious that the revenue of Government would have been liable to gradual diminution.

Previous, however, to the Company's accession to the *Diwani*, numerous grants of this description were made, not only by the *zamindars*, but by the officers of Government appointed to the temporary superintendence of the collection of the revenue, under the pretext that the produce of the lands was to be applied to religious or charitable uses.

Of these grants some were applied to the purposes for which they were professed to have been made, but in general they were given for the personal advantage of the grantee, or with a view to the clandestine appropriation of the produce to the use of the grantor, or sold to supply his private exigencies.

In conformity to the principles which prevailed under the Native Administration, the British Government have at various times declared all grants for holding land exempt from the payment of revenue made since the date of the Company's accession to the *Diwani*, without their sanction, illegal and void.

Their lenity, however, induced them to adopt it as a principle that grants of this description made previous to the date of the *Diwani*, and provided the grantees had obtained possession, should be held valid to the extent of the intentions of the grantor, as ascertainable from the terms of the writings by which the grants might have been made, or from their nature and denomination.

But no complete register of these exempted lands having been formed upon the Company's accession to the *Diwani*, nor subsequent to that period, many *zamindars*, as well as the temporary farmers of the public revenue, and the officers of Government to whom the collection of the revenue in the different districts has been occasionally committed, in consequence of the *zamindars* refusing to pay the revenue demanded of them, have availed themselves of the above-mentioned rule of limitation to make grants of extensive tracts of land to others, or in the names of their relations or dependents, for their own use, dating the deeds for these alienations previous to the Company's accession to the *Diwani*, or procuring them to be registered in the *zamindari* records as having been alienated prior to that period.

Others have made such alienations without antedating the grants, and left it to the grantee to maintain

of 1793.]

(Sec. 1.)

himself in possession by such means as circumstances might afford, in the event of his title being brought into question.

The Governor General in Council deeming it incumbent on him to recover the public dues thus alienated in opposition to the ancient and existing laws of the country, as well as to resume the revenue of all lands the grants for which might expire; and as the proprietors of estates were not entitled to collect such of the public dues from the lands included in their estates, as Government had judged it advisable to transfer to individuals, or to resume those which had been alienated by themselves or others, the amount in both cases being excluded from the assets on which the settlement was to be concluded, it was made a rule at the time of forming the decennial settlement, and which has been re-enacted by section 36, Regulation VIII, 1793,¹ that the *jama* assessed upon the estates of individuals was to be considered as exclusive and independent of all existing *lakhiraj* lands, whether exempted from the *khiraj* or public revenue, with or without due authority; and by the third clause of the seventh article of the Proclamation contained in Regulation 1, 1793,² which specifies the conditions under which Government declared the decennial settlement permanent, it is expressly stipulated that the Governor General in Council will impose such assessment as he may deem equitable on all lands at present alienated and paying no public revenue, which have been or may be proved to be held under illegal or invalid titles.

The Governor General in Council, however, at the same time that he is desirous of recovering the public dues from lands which have been illegally alienated, is equally solicitous that persons holding such grants under titles that are declared valid should be secured in the possession and enjoyment of their property.

It is likewise his wish that the recovery of the dues of Government from those lands which have been illegally alienated previous to the 1st December, 1790, should be attended with as little distress as possible to the possessors; and, to obviate all injustice or extortion in the inquiry into the titles of persons holding exempted lands, he has further resolved that the claims of the public on their lands (provided they register the grants as required in this Regulation) shall be tried in the Courts of Judicature, that no such exempted lands may

¹The Bengal Decennial Settlement Regulation, 1793.

²The Bengal Permanent Settlement Regulation, 1793

(Sec. 2.)

be subjected to the payment of revenue until the titles of the proprietor shall have been adjudged invalid by a final judicial decree.

Upon the above grounds, and with a view to facilitate the recovery of the public dues from lands held exempted under invalid grants, as well as to prevent any similar alienations being hereafter made, to the prejudice of the security of the public revenue which has been assessed in perpetuity upon the estates of individuals; and further, that Government and the officers employed in the collection of the public revenue may at all times have in their possession a correct register of the lands in the several *zilas* held exempt from the payment of revenue, the following rules, containing the rules passed on the 1st December, 1790, with modifications, have been enacted :

Validity of
grants of
alienated land
made before
and after
12th August,
1765.

2. *First*.—All grants for holding land exempt from the payment of revenue made previous to the 12th August, 1765, the date of the Company's accession to the *Diwani*, by whatever authority, and whether by a writing or without a writing, shall be deemed valid, provided the grantee actually and *bonâ fide* obtained possession of the land so granted previous to the date above-mentioned, and the land shall not have been subsequently rendered subject to the payment of revenue by the officers or the orders of Government.

If it shall be proved, to the satisfaction of the Court, that the grantee did not obtain possession of the land so granted previous to the 12th August, 1765, or that he did obtain possession of it prior to that date, but that it has been since subjected to the payment of revenue by the officers or the orders of Government, the grant shall not be deemed valid.

Reference of
doubtful
claims to
Provincial
Government.

Second.—In the event, however, of a claim being preferred by any person to hold land exempt from the payment of revenue, under a grant made previous to the date of the Company's accession to the *Diwani*, and of it being proved, to the satisfaction of the Court in which the suit may be instituted in the first instance, or to which it may be appealed, that the grantee held the land exempt from the payment of revenue previous to that date, but that it was subjected to the payment of revenue posterior thereto by an officer of Government, and the Court shall entertain doubts as to the competency of such officer, under the powers vested in him, to subject the lands to the payment of revenue, the Court shall suspend its judgment and report the circumstances to

of 1793.]

(Sec. 2.)

the ¹[Provincial Government], to whom a power is reserved of determining whether such officer was or was not competent to subject the land to the payment of revenue; and, upon receiving the determination of the ¹[Provincial Government], the Court is to decide accordingly.

No such claim, however, to hold exempt from the payment of revenue land that may have been subjected to the payment of revenue for the twelve years preceding the date on which the claim may be instituted shall be heard by any *Zila* or City Court, unless the claimant can show good and sufficient cause for not having preferred the claim to a ²competent jurisdiction within the twelve years * * * * *

Third.—But no part of the two preceding clauses is to be construed to empower the Courts to adjudge any person, not being the original grantee, entitled to hold exempt from the payment of revenue land now subject to the payment of revenue, under a grant made previous to the Company's accession to the *Diwani*, the writing for which may expressly specify it to have been given for the life of the grantee only: or supposing no such specification to have been made in the writing, or the writing not to be forthcoming, or no writing to have been executed, where the grant, from the nature and denomination of it, shall be proved to be a life-tenure only according to the ancient usages of the country.

No persons, not being original grantees, entitled to hold lands free of

Fourth.—Nor to entitle the heirs of any person now holding land exempt from the payment of public revenue under a grant made previous to the *Diwani*, to succeed to and hold such land exempt from the payment of revenue upon the demise of the present possessor, where the writing for such grant may expressly specify it to have been given for the life of the grantee only; or supposing no such specification to have been made in the writing, or the writing not to be forthcoming, or no writing to have been executed, where, from the nature and denomination of the grant, it shall be proved to be a life-tenure only, according to the ancient usages of the country.

Nor also heirs of present possessors.

¹These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²*Sic* in Clarke.

³The words and figures "and proceeded in it, as required by section 14, Regulation 3, 1793," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

(Sec. 2.)

Nor to entitle the heir to any such person to hold the lands exempt from the payment of revenue after his demise, supposing the writing for the grant not to specify whether it was to be considered hereditary or otherwise; unless it shall be proved, to the satisfaction of the Court, that the grant, from the nature and denomination of it, is hereditary according to the ancient usages of the country.

But upon the demise of the present possessor of any such grant, which may be adjudged not hereditary under this clause, if it shall appear that one or more successions, in virtue of whatever right, shall have taken place before the date of the *Diwani*, the lands shall not be subjected to the payment of revenue under the decree without the sanction of the ¹[Provincial Government], to whom a copy of the proceedings and decree of the Court is to be transmitted, and to whom is reserved a power of declaring the lands subject to the payment of revenue or not, as may appear to ²[it] proper.

Fifth.—The present possessors of lands now exempt from the payment of revenue, under such life-grants made previous to the *Diwani*, and declared by the preceding clause not to be hereditary, are prohibited from selling or otherwise transferring them, or mortgaging the revenue of them for a longer period than their own lives, and all such transfers and mortgages are declared illegal and void.

It is to be understood, however, that if any such life-grants shall have been confirmed as hereditary tenures by Government, or by the officers of Government empowered so to confirm them, they are not to be liable to the payment of revenue on the death of the present possessors, and are to be excepted from the other rules contained in this and the preceding clause.

If doubts shall arise in any Court as to the competency of the authority of any officer of Government to confirm any such life-grant as hereditary, the Court is to suspend its judgment, and report the circumstances to the ¹[Provincial Government], to whom a power is reserved of determining finally whether such officer possessed competent authority to confirm the grant as hereditary or not, and the Court, upon receiving the determination of the ¹[Provincial Government] is to decide accordingly.

¹See foot-note 1 on p. 51, *ante*.

²The word "him," in the original text, is to be read as if the word "it" were substituted therefor—see the Amending Act, 1903 (I of 1903).

Present
possessors
prohibited
from
transferring or
mortgaging
grants.

of 1783.]

(Sec. 3.)

3. *First.*—All grants for holding land exempt from the payment of revenue, which may have been made since the 12th August, 1765, and previous to the 1st December, 1790, corresponding with the 18th *Aghan*, 1197, Bengal era, [*the 10th Aghan*, 1198, *Fasli*], the 18th *Aghan*, 1198, *Wilayati*, by any other authority than that of Government, and which may not have been confirmed by Government, or by any officer empowered to confirm them, are declared invalid.

All grants made or confirmed since *Diwani* declared invalid.

Second.—If doubts shall be entertained by any Court as to the competency of the authority of any officer to confirm any such grant, the Court is to suspend its judgment, and report the circumstances of the case to the ¹[Provincial Government], to whom a power is reserved of determining finally whether the officer possessed competent authority to confirm the grant, or otherwise, and the Court, upon receiving the determination of the ¹[Provincial Government] shall decide accordingly.

Courts how to proceed in case of doubt of authority of officer confirming grant.

Third.—The rule contained in clause first is not to be considered to extend to authorize the subjecting to the payment of revenue land held exempt from the payment of it under grants made previous to the commencement of the Bengal year 1178² or the [*Fasli* or] *Wilayati* year 1179 [*(according as the land may be situated in Bengal, Bihar or Orissa)*], under the signature of the chiefs of the late provincial councils and the seals of those councils, agreeably to an authority vested in them by Government for granting land to be held exempt from the payment of revenue, the annual produce of which did not exceed one hundred rupees.

Exception in favour of grants made by chiefs of provincial councils.

Fourth.—Nor to authorize the subjecting to the payment of revenue any land the grants for which, whether for the life of the grantee or otherwise, were made previous to the commencement of the Bengal year 1178² or the [*Fasli* or] *Wilayati* year 1179 [*(according as the land may be situated in Bengal, Bihar or Orissa)*], where the quantity of land granted shall not exceed ten *bighas*, and the produce of it is *bonâ fide* appropriated as an endowment on temples, or to the maintenance of *Brahmans*, or other religious or charitable purposes.

And also of certain grants made for religious or charitable purposes.

The rule in this clause is declared to extend also to all grants of land whatever, not exceeding ten *bighas*, made previous to the *Diwani*, the produce of which may be now so appropriated.

¹See foot-note 1 on p. 51, *ante*.

²i.e., the 13th April, 1770.

(Secs. 4, 5.)

Disputes
regarding
proprietary
right.

4. This Regulation, as far as regards lands alienated previous to the 1st December, 1790, respects only the question whether they are liable to the payment of revenue or otherwise.

Every dispute or claim regarding the proprietary right in lands alienated previous to that date, and which, in conformity to this Regulation, may become subject to the payment of revenue, is to be considered as a matter of a private nature, to be determined by the Courts of *Diwani Adalat*, in the event of any dispute or claim arising respecting it between the grantee and the grantor, or their respective heirs or successors.

The grantees, or the present possessors, until dispossessed by a decree of the *Diwani Adalat*, are to be considered as the proprietors of the lands, with the same right of property therein as is declared to be vested in proprietors of estates or dependent *taluks* (according as the land may exceed or be less than one hundred *bighas* as specified in sections 6, 7 ^{1*} *), subject to the payment of revenue, and they are to execute engagements for the revenue with which their lands may be declared chargeable, either to Government, or to the proprietor or farmer of the estate in which the lands may be situated, or to the officer of Government (according as the revenue of the estate in which the land may be situated may be payable by the proprietor or a farmer, or collected *khas*), under the rules for the decennial settlement.

If by the decision of the *Diwani Adalat* the proprietary right in the land shall be transferred, the person succeeding thereto is, in like manner, to be responsible for the payment of the revenue assessed or chargeable thereon.

Effect of
continuing
proprietary
right to
grantee in
possession.

5. By continuing the proprietary right in the land to the grantee or possessor, in the cases specified in the preceding section, instead of dispossessing him of the land altogether, agreeably to former usage, and assessing the land in the mode prescribed in the two following sections, a liberal provision will be left to him.

Where the grant may have been made before the Bengal year 1178² or the [*Fasli or*] *Wilayati* year 1179, the proprietor will hold his land as an estate paying a fixed revenue of only half the amount assessed on other *mālguzāri* lands in the country;

¹The word and figure "and 21" which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

²i.e., the 13th April, 1770.

of 1793.]

(Secs. 6—8.)

and, where the grant may have been made subsequent to the above-mentioned periods, he will hold the land as subject to the payment of the same revenue as other lands assessed with revenue, under the rules for the decennial settlement, as hereafter directed.

6. The revenue assessable under section 9 on land not exceeding one hundred *bighas* of the measurement that may prevail in the *pargana* wherein it may be situated, and whether lying in one village, or two or more villages, and that may have been alienated by any one grant made previous to the 1st December, 1790, and which may be adjudged or become liable to the payment of revenue, shall belong to the person responsible for the discharge of the revenue of the estate or dependent *taluk* in which the land may be situated, notwithstanding anything said in section 8, Regulation 1, 1793¹;

To whom revenue assessed on lands, not exceeding 100 *bighas* alienated before 1st December, 1790, is to belong.

and he shall not be liable to the payment of any additional revenue on account of the assessment which may be chargeable on such lands during the continuance of the engagement under which he may pay the revenue of such estate or dependent *taluk*, when the land may be so adjudged liable to the payment of revenue.

If the estate or dependent *taluk* shall be held *khas*, when the lands are decreed liable to the payment of revenue, the amount is to be collected by, and paid to, whomsoever the rents and revenue of the estate or *taluk* may be payable, until a settlement shall be concluded for the revenue of it, either with the proprietor or a farmer.

The land which may be so adjudged subject to the payment of the revenue is to be considered as a dependent *taluk*.

7. The revenue assessable under section 8 on land exceeding one hundred *bighas* of the measurement that may prevail in the *pargana* wherein it may be situated, and whether lying in one village, or two or more villages, and alienated by any one grant made previous to the 1st December, 1790, and which may be adjudged or become liable to the payment of revenue, is declared to belong to Government.

Revenue on lands exceeding 100 *bighas*, alienated prior to 1st December, 1790, to belong to Government.

The land specified in this section, which may be adjudged liable to the payment of revenue, are to be considered as independent *taluks*.

8. *First*.—The amount of the revenue payable from the lands specified in section 7 is to be adjusted according to the following rules:

Rules for assessment under section 7.

¹The Bengal Permanent Settlement Regulation, 1793.

(Sec. 8.)

If grant made
previous to
Bengal year
1178, or
[*Fasli* or]
Wilayati
year 1179.

Second.—If the grant shall have been made previous to the Bengal year 1178¹ or the [*Fasli* or] *Wilayati* year 1179 [*(according as the lands may be situated in Bengal, Bihar or Orissa),*] the revenue to be paid to Government shall be equal to one-half of the annual produce of the land, calculating according to the rates at which other lands in the *pargana* of a similar description may be assessed.

If any part of the land shall be uncultivated, the proprietor is to be required to bring it into cultivation, and to pay such *rasad* or progressive increase, to be regulated with a reference to the reduced rate of the assessment on the cultivated lands, as the Board of Revenue, with the sanction of the ²[Provincial Government], may deem reasonable.

The produce of the land shall be ascertained by a survey and measurement, one-half of the expense attending which is to be defrayed by the proprietor, in the event of his agreeing to the *jama* required of him, and the other moiety by Government; or by such other mode of investigation as the Collector, with the sanction of the Board of Revenue, may judge advisable.

If the proprietor shall refuse to agree to the assessment, the lands are to be let in farm or held *khas*, under the rules prescribed in Regulation VIII, 1793.³

If the proprietor shall agree to pay the revenue that may be required of him, the amount shall not be liable to any variation in future, but he and his heirs and successors shall hold the lands at such fixed revenue for ever.

If grant made
after that
time.

Third.—If the grant shall have been made subsequent to the Bengal year 1178¹ or the [*Fasli* or] *Wilayati* year 1179 [*(according as the lands may be situated in Bengal, Bihar or Orissa),*] the revenue or *jama* to be paid to Government from the land shall be assessed agreeably to the rules prescribed in Regulation VIII, 1793³, for forming the settlement of estates paying revenue to Government, and the produce shall be ascertained, and the expense of the investigation defrayed, in the manner specified with regard to the lands in the preceding clause.

If the proprietor shall refuse to agree to the assessment, the lands are to be let in farm or held *khas*, under the rules for the decennial settlement.

¹i.e., the 13th April, 1770.

²See foot-note 1 on p. 51, *ante*.

³The Bengal Decennial Settlement Regulation, 1793.

of 1793.]

(Secs. 9, 10.)

If the proprietor shall agree to pay the revenue that may be required of him, the amount shall not be liable to any variation in future, but he and his heirs and successors shall hold the land at such fixed revenue for ever.

9. The rules in the preceding section are to be held applicable to the lands specified in section 6; with this difference, that the proprietor, farmer, dependent *talukdar* or officer of Government to whom the revenue may be payable shall ascertain the produce of the lands without subjecting the grantee to any expense, and submit the accounts of it to the Collector, who shall fix the revenue to be paid from the lands in perpetuity, reporting the amount for the confirmation of the Board of Revenue, who are empowered, in cases in which it shall appear to them proper, to increase or reduce the amount.

Rule for fixing revenue on land specified in section 6.

If the proprietor shall agree to pay the revenue required of him, he and his heirs and successors shall hold the lands as a dependent *taluk*, subject to the payment of such fixed revenue for ever.

10. All grants for holding land exempt from the payment of revenue whether exceeding or under one hundred *bighas*, that have been made since the 1st December, 1790, or that may be hereafter made, by any other authority than that ¹[of the Provincial Government or, before the commencement of Part III of the Government of India Act, 1935, of the Central Government,] are declared null and void, and no length of possession shall be hereafter considered to give validity to any such grant, either with regard to the property in the soil or the rents of it.

Grants made since 1st December, 1790, declared void.

²*And every person who now possesses, or may succeed to, the proprietary right in any estate or dependent taluk, or who now holds or may hereafter hold any estates or dependent taluk in farm of Government, or of the proprietor, or any other person, and every officer of Government appointed to make the collections from any estate or taluk held khas, is authorized and required to collect the rents from such lands at the rates of the*

¹These words were substituted for the words "of the Governor General in Council or the Local Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²So much of s. 10 as authorises and requires proprietors and farmers of estates and dependent *taluks* (in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to the 1st December, 1790) "of their own authority to collect the rents of such land and to dispossess the grantees of the proprietary right in the land and to re-annex it to the estate or *taluk* in which it may be situate" has been repealed by the Bengal Rent Act, 1859 (X of 1859), s. 28.

(Secs. 11—15.)

pargana, and to dispossess the grantee of the proprietary right in the land, and to re-annex it to the estate or taluk in which it may be situated, without making previous application to a Court of Judicature, or sending previous or subsequent notice of the dispossession or annexation to any officer of Government;

nor shall any such proprietor, farmer or dependent *talukdar* be liable to an increase of assessment on account of such grants which he may resume and annul, during the term of the engagements that he may be under for the payment of the revenue of such estate or *taluk* when the grant may be so resumed and annulled.

The managers of the estates of disqualified proprietors, and of joint-undivided estates, are authorized and required to exercise, on behalf of the proprietors, the powers vested in proprietors by this section.

How
proprietors and
farmers to
recover revenue
on lands
specified in
section 6.

11. Proprietors or farmers of land, or dependent *talukdars*, who may deem themselves entitled to the revenue of any land of the description of that specified in section 6 situated in their respective estates, farms or *taluks*, are to institute a suit for the recovery of it in the Court of *Diwani Adalat*.

Any proprietor or farmer of land, or dependent *talukdar*, or other person, subjecting such lands to the payment of revenue, without having previously obtained a judicial decree for that purpose, shall be liable to be sued for damages by the parties injured.

Where estates or dependent *taluks* may be held *khas*, the right of suing for the recovery of the revenue from the lands specified in section 6 is to be considered as vested in the party to whom the collections from the estate or *taluk* may be payable.

If the estate or *taluk* be held *khas* by Government, the *tahsildar* or other officer is to sue for the revenue chargeable on such lands in the room of the proprietor, but under the directions of the Collector.

12 to 14. [*Suits by Collectors for the recovery of invalid lakhiraj.*] *Rep. by the Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819 (II of 1819).*

Suits by or
against
Government.

15. The Collectors of the revenue are to defend all suits that may be instituted against Government, by any individual claiming a right to hold lands exempt from the payment of public revenue; and such suits, and the suits which the Board of Revenue may direct

of 1793.]

(Secs. 16, 17.)

the Collector to institute, are to be defended and prosecuted by the *vakil* of Government under the instructions of the Collector;

and in the event of Government being cast, either wholly or in part, or if the Collector shall be dissatisfied with the decree in any respect, all the rules contained in section 30, Regulation XIV, 1793,¹ and the other sections in that Regulation respecting decisions given against a Collector in any *Zila* Court, in suits instituted against him by any proprietor or farmer of land, for sums of money demanded or actually received by him as arrears of revenue, are to be held applicable to such decree; with this difference, that the suit, from the commencement of it, is to be defended or carried on at the expense of Government, and in the event of the Board of Revenue not deeming it proper to order an appeal against the decision of the *Zila* Court to be preferred to the Provincial Court of Appeal, or against the decision of the Provincial Court to the *Sadar Diwani Adalat*, in the event of their ordering the cause to be appealed to the Provincial Court, and of its being given against them therein, they are to report their reasons, in both cases, for not preferring the appeal, to the ²[Provincial Government], who will direct the cause to be appealed, or not, in either case as may appear to ³[it] proper.

16. [Courts to award costs in cases of groundless prosecution.] Rep. by the Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819 (II of 1819).

17. If it shall appear to any Court of Judicature during the course of a trial that a grant for land to be held exempt from the payment of revenue, dated prior to the 1st December, 1790, has been forged, or that the name of the original grantee has been erased and any other name substituted, or that any name not in the original grant has been inserted, or that the denomination of the tenure in the original grant has been erased or altered, or that the date of the grant has been changed, or that the grant has been ante-dated, the grant shall be adjudged null and void, as far as regards the exemption of the land from the payment of revenue, and the land shall be subjected to the payment of revenue accordingly.

Grants forged
or altered in
any respect or
ante-dated,
declared void.

¹Ben. Reg. XIV of 1793 was repealed by the Repealing Act, 1874 (XVI of 1874); but this reference is saved by the proviso to that Act.

²See foot-note 1 on p. 51, *ante*.

³The word "him," in the original text, is to be read as if the word "it" were substituted therefor—see the Amending Act, 1903 (I of 1903).

(Secs. 18—24.)

18. [*Persons concerned in fraud liable to criminal prosecution.*] *Rep. by the Repealing Act, 1874 (XVI 1874).*

19. [*Revenue to be paid from date of first decree for resumption.*] *Rep. by the Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819 (II of 1819).*

Transfer of
grants.

20. Grants of land, which from the terms of the grant or the nature of the tenure are hereditary, and are declared valid by this Regulation, or which have been or may be confirmed by ¹[the Crown], or any of its officers possessing competent authority to confirm them, are declared transferable by gift, sale or otherwise;

and all persons succeeding to such grants, by whatever mode, are required to register their names in the office of the Collector within six months after they may succeed to the grant.

But all such purchases are to be considered as made at the risk of the purchaser; and in the event of the grant not proving to be hereditary, or not to have been made or confirmed by ¹[the Crown], or its officers possessing competent authority, the transfer is not to preclude the land from being subjected to the payment of revenue under this Regulation.

21, 22. [*Payment of revenue where to be made; register of lands held exempt from revenue prior to 1st December, 1790.*] *Rep. by the Land Registration Act, 1876 (Ben. Act VII of 1876).*

23. [*Form for periodical Register.*] *Rep. by the Repealing Act, 1868 (VIII of 1868).*

Time for regis-
try of grants.

24. All persons actually holding lands exempt from the payment of public revenue, whether exceeding or under one hundred *bighas*, in virtue of grants made previous to the 1st December, 1790, and whether made or confirmed by the Government of the country for the time being, or any other authority, shall be allowed one year from the date of the publication prescribed in the following section to register the required particulars respecting their grants in the office of the Collector of the revenue of the *zila* in which the lands may be situated.

¹These words were substituted for the words "the British Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1793.]

(Secs. 25—28.)

25. [*Publication to be made, requiring all persons to register grants.*] *Rep. by the Amending Act, 1903 (I of 1903).*

26. If any person in possession of any such grant of land now held exempt from the payment of revenue shall omit to register it by the time prescribed in the publication, together with as accurate a detail of the particulars thereby required as he may be able to furnish, the land included in the grant shall, by such omission, become subject to the payment of revenue in the same manner as if it had been adjudged liable to the payment of revenue by a final decree of a Court of Judicature, and the Collector, if the land shall exceed one hundred *bighas*, shall proceed to assess the lands accordingly; and, if it shall be under one hundred *bighas*, the party to whom the revenue of the land may be payable under section 6 is empowered to assess the lands as therein directed.

Lands not registered within prescribed time.

The ¹[Provincial Government], however, reserves to ²[itself] the power of admitting any grant upon the register after the expiration of the prescribed time, in the event of the possessor of the land showing good and sufficient cause, to ³[its] satisfaction, for not having registered it within the limited period, and the Board of Revenue are to report to the ¹[Provincial Government] every case in which persons who may have omitted to register their grants as required may appear to them entitled to have their grants admitted upon the register.

27. After the expiration of the period limited for registering grants, all grants not registered within the prescribed time, and which may not be subsequently admitted on the register by the ¹[Provincial Government], are declared invalid, as far as regards the exemption from the payment of revenue, and the land shall be assessed with revenue as directed in section 26.

Grants not registered within prescribed period, etc., invalid.

28. It is expressly declared, however, that the registry of grants under this Regulation is not to be considered as an admission of the right of the person in whose name they may be registered to the property in

Effect of registry of lands.

¹These words were substituted for the words "Governor General in Council" by Sch. XIV of the Government of India (Adaption of Indian Laws) Order, 1937.

²This word was substituted for the word "himself" by paragraph 5 (2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³This word was substituted for the word "his", *ibid.*

62 *The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.*

[Ben. Reg. XIX of 1793.]

(Secs. 29—49.)

the soil, or of his title to hold the lands exempt from the payment of revenue.

Any person will be at liberty to sue him in the *Diwani Adalat* for the former, and he will be liable to be sued for the recovery of the latter by the Collector with the sanction of the Board of Revenue in the event of it appearing to that Board that the lands are liable to the payment of revenue.

29 to 34. [*Preparation of registers; counterpart registers; entries regarding exempted lands and documents respecting same.*] Rep. by the *Land Registration Act, 1876* (Ben. Act VII of 1876).

35. [*How separations and annexations of exempted lands are to be notified to the Courts.*] Rep. by the *Amending Act, 1903* (1 of 1903).

36 to 46. [*Registers of intermediate resumptions, and periodical registers; correction of errors in same; registry of disputed grants; liability of holders of grants to furnish information; to whom copies of periodical registers are to be sent; penalty for receiving bribes in connection with the registry of grants.*] Rep. by the *Land Registration Act, 1876* (Ben. Act VII of 1876).

Rules respecting life-grants applicable to grants for a term.

47. All the rules in this Regulation respecting lands now held, or that may be claimed to be held, exempt from the payment of revenue, under life-grants made previous to the date of the Company's accession to the *Diwani*, are to be considered equally applicable to grants made previous to that date for a term only.

Saving of grants made or confirmed by late superintendents of the *bazi-zamin daftar*;

48. No part of this Regulation is to be considered to annul any grants for holding land exempt from the payment of revenue, made or confirmed by the late superintendents of the *bazi-zamin daftar* in Bengal, in virtue of the powers vested in them.

and of *bad-shahi* grants.

49. Nor to extend to *jagir*, *altamgha*, *mudadmash*, *aima* or other grants of land termed *badshahi* or royal, and held, or stated to be held, under a royal *farman*.

The rules applicable to such grants are contained in Regulation XXXVII. 1793.¹

¹The Bengal Revenue-free Lands (Badshahi Grants) Regulation 1793.

Bengal Regulation XXXVII of 1793

[The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.]

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Bengal Regulation XXXVII of 1793

[The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.]¹

(1st May 1793.)

A Regulation for re-enacting, with modifications, the rules passed on the 23rd April, 1788, and subsequent dates, for trying the validity of the titles of persons holding or claiming a right to hold altamgha, jagir and other lands exempt from the payment of public revenue, under grants termed badshahi or royal, and for determining when certain grants of that description shall be considered to have expired; and for fixing the amount of the public revenue to be assessed upon the lands the grants for which may expire or be adjudged invalid.

1. By the ancient law of the country the ruling power is entitled to a certain proportion of the produce of every *bigha* of land, unless it transfers its right thereto for a term or in perpetuity. Preamble.

As a necessary consequence of this law every grant or alienation of Government's proportion of the produce of lands without its sanction was considered null and void.

Had the validity of such grants or alienation been admitted it is obvious that the public revenue would have been liable to gradual diminution.

Under the Native Government grants were occasionally made of the Government's share of the produce

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was declared, by the Cuttack Land-revenue Regulation, 1805 (XII of 1805), s. 25, to be in force, with modifications, in the *Parganas* of Pataspur and Bograi in the district of Midnapore in Bengal.

The Regulation was afterwards declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

(Sec. 1.)

of lands, for the support of the families of persons who had performed public services, for religious or charitable purposes, for maintaining troops and for other services.

The British Government continued to the grantees or their heirs such of these grants as were hereditary, and were made before the date of the Company's accession to the *Diwani*, provided the grantees or their heirs had obtained possession previous to that date; but those grants which were for life only have been invariably considered as resumable on the death of the grantees.

No complete register of these grants having been formed on the Company's accession to the *Diwani*, nor subsequent to that period, many persons have retained possession of lands under fabricated or ante-dated grants, or have succeeded to life-grants on the demise of the original grantee or former possessor, without the sanction of Government.

The Governor General in Council deeming it incumbent on him to resume the public dues from lands held under invalid tenures, as well as the revenue of all lands the grants for which might expire, and as the proprietors of estates were not entitled to collect such of the public dues from the lands included in their estates as Government had judged it advisable to transfer to individuals, or to resume those which had been alienated or were appropriated without authority, the amount of the revenue of the lands having in both cases been excluded from the assets on which the settlement was to be concluded, it was made a rule at the time of forming the decennial settlement, and which has been re-enacted by section 36, Regulation VIII, 1793¹, that the *jama* assessed upon the estates of individuals was to be considered as exclusive and independent of all existing *lakhiraj* lands, whether exempted from the *khiraj* or public revenue, with or without due authority;

and by the third clause of the seventh article of the Proclamation contained in Regulation 1, 1793,² which specifies the conditions under which Government declared the decennial settlement permanent, it is expressly stipulated that the Governor General in Council will impose such assessment as he may deem equitable on all lands at present alienated and paying no public revenue which have been or may be proved to be held under illegal or invalid titles.

¹The Bengal Decennial Settlement Regulation, 1793.

²The Bengal Permanent Settlement Regulation, 1793.

of 1793.]

(Sec. 2.)

The Governor General in Council, however, at the same time that he is desirous of recovering the public dues from lands held under invalid tenures, is equally solicitous that persons holding lands under grants that are declared valid should be secured in the quiet possession and enjoyment of them.

With this view, and to obviate all injustice or extortion in the inquiry into the titles of persons possessing lands under such grants, he has resolved that all claims of the public for the resumption of such grants (provided the grantees or persons in possession register their grants as required in this Regulation) shall be tried in the Courts of Judicature, that no such grants may be resumed until the title of the grantee or present possessor shall have been adjudged invalid by a final judicial decree.

Upon the above grounds, and with a view to facilitate the resumption of invalid grants, as well as to prevent any grants being hereafter made without the authority of Government, and further that Government and its officers may at all times have in their possession a correct register of the lands in the several *zilas* held exempt from the payment of revenue under *badshahi* grants, the following rules, containing the rules passed on the 23rd April, 1788, and subsequent dates, with modifications, have been enacted.

2. *First.*—*Altamgha, jagir, aima, madadmash* or other *badshahi* grants for holding land exempt from the payment of revenue, made previous to the 12th August, 1765, the date of the Company's accession to the *Diwani*, shall be deemed valid, provided the grantee actually and *bonâ fide* obtained possession of the land so granted previous to that date and the grant shall not have been subsequently resumed by the officers or the orders of Government.

Badshahi grants made before Diwani.

If it shall be proved to the satisfaction of the Court that the grantee did not obtain possession of the land so granted previous to the 12th August, 1765, or that he did obtain possession of it prior to that date, but that it has been since resumed by the officers or the orders of Government, the grant shall not be deemed valid.

Second.—In the event, however, of a claim being preferred by any person to hold land exempt from the payment of revenue, under a *badshahi* grant made previous to the date of the Company's accession to the *Diwani*, and on it being proved to the satisfaction of the Court in which the suit may be instituted in the first instance, or to which it may be appealed, that the

Procedure in case of doubts as to authority of officer having resumed grants.

[Ben. Reg. XXXVII]

(Sec. 2.)

grantee held the land exempt from the payment of revenue, but that it was subjected to the payment of revenue posterior thereto by an officer of Government, and the Court shall entertain doubts as to the competency of such officer, under the powers vested in him, to resume the grant and subject the lands to the payment of revenue, the Court shall suspend its judgment and report the circumstances to the ¹[Provincial Government], to whom a power is reserved of determining whether such officer was or was not competent to resume the grant; and, upon receiving the determination of the ¹[Provincial Government], the Court is to decide accordingly.

No such claim, however, to hold exempt from the payment of revenue, land that may have been subjected to the payment of revenue for the twelve years preceding the date on which the claim may be instituted, shall be heard by any *Zila* or City Court, unless the claimant can show good and sufficient cause for not having preferred the claim to a competent authority within the twelve years ² * * * *.

Persons not being original grantees not entitled to hold lands free;

Third.—But no part of the two preceding clauses is to be construed to empower the Courts to adjudge any person, not being the original grantee entitled to hold land paying revenue to Government, exempt from the payment of revenue, under a *jagir* or other grant made previous to the Company's accession to the *Diwani*, where the grant may expressly specify it to have been given for the life of the grantee only; or, supposing no such specification to have been made in the grant, or the grant not to be forthcoming, where the grant, from the nature and denomination of it, shall be proved to be a life-tenure only, according to the ancient usages of the country.

nor also heirs of persons now possessing exempted lands under life-grants made previous to *Diwani*.

Fourth.—Nor to entitle the heirs of any person now holding lands exempt from the payment of public revenue under a *jagir* or other *badshahi* life-grant made previous to the *Diwani* to succeed to and hold such land exempt from the payment of revenue upon the demise of the present possessor; where the grant may expressly specify it to have been given for the life of the grantee only, or supposing no such specification to have been made in the grant, or the grant not to be

¹These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words and figures "and proceeded in it as required by section 14, Regulation 3, 1793", which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

of 1793.]

(Secs. 3—5.)

forthcoming, where from the nature and denomination of the grant it shall be proved to be a life-tenure only, according to the ancient usages of the country.

Fifth.—The present possessors of lands now exempt from the payment of revenue under such *jagir* or other life-grants made previous to the *Diwani* and declared by the preceding clause not to be hereditary, are prohibited from selling or otherwise transferring them, or mortgaging the revenue of the lands for a longer period than their own lives, and all such transfers and mortgages which have been or may be made are declared illegal and void.

Present possessors not to transfer or mortgage grants.

3. First.—All *badshahi* grants for holding land exempt from the payment of revenue, which may have been made since the 12th August, 1765, by any other authority than that of Government, and which may not have been confirmed by Government, or by any officer empowered to confirm them, are declared invalid.

Certain grants made or confirmed since *Diwani* declared invalid.

Second.—If doubts shall be entertained by any Court as to the competency of the authority of any officer to confirm any such grant, the Court is to suspend its judgment and report the circumstances of the case to the ¹[Provincial Government], to whom a power is reserved of determining finally whether the officer possessed competent authority to confirm the grant, or otherwise, and the Court, upon receiving the determination of the ¹[Provincial Government], shall decide accordingly.

Procedure in cases of doubt of authority of officer confirming grant.

4. It is to be understood that this Regulation respects only the Government proportion of the revenue arising from lands held or claimed to be held under *badshahi* grants, and whether Government is entitled to resume or retain such revenue or otherwise.

Questions regarding proprietary right to be determined in *Diwani Adalat*.

Every dispute or claim regarding the *zamindari* or proprietary right in lands included in any grant is to be considered as a matter of a private nature between the contending parties, and is to be determined in the *Diwani Adalat*.

5. When a *jagir* or other life-grant shall escheat ²[to the Crown], the Collector is immediately to attach the revenue of the lands and report the circumstance to the Board of Revenue, who are to obtain the orders of the ¹[Provincial Government] regarding the resumption of the grant.

Collectors to attach revenue of lands in escheated grants.

¹See foot-note 1 on p. 68, *ante*.

²These words were substituted for the words "to Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Secs. 6—10.)

Assessment of
lands included
in resumed
grants.

6. When any *badshahi* grant shall be resumed or expire, or escheat ¹[to the Crown], the revenue to be paid ¹[to the Crown] from the lands included in it shall be assessed, and the settlement made in perpetuity, agreeably to the rules for the decennial settlement contained in Regulation VIII, 1793,² with the person possessing the *zamindari* or proprietary right in the lands, whoever he may be.

If the proprietor shall refuse to pay the *jama* demanded of him, the land shall be held *khas* or let in farm, as directed in that Regulation.

7 to 9. [*Suits by Collectors for the recovery of invalid lakhiraj.*] Rep. by the Bengal Land-revenue Assessment Regulation, 1819 (II of 1819).

Suits against
Government
by persons
claiming to
hold lands
paying
revenue
exempt from
revenue under
badshahi
grants.

10. Any person having a claim to hold lands paying revenue exempt from the payment of revenue under a *badshahi* grant must institute his claim against Government, who alone can be the defendant in such suits, in the *Diwani Adalat* of the *zila*, in the same manner as in cases where individuals may claim a right to hold lands paying revenue exempt from the payment of revenue under grants not of the description of those termed *badshahi*, in virtue of Regulation XIX, 1793³.

The Collectors of the revenue are to defend all such suits as may be instituted against Government, and such suits, and the suits which the Board of Revenue may direct the Collector to institute, are to be defended or prosecuted by the *vakil* of Government, under the instructions of the Collector;

and in the event of Government being cast, either wholly or in part, or if the Collector shall be dissatisfied with the decree in any respect, all the rules contained in section 30, Regulation XIV, 1793⁴ and the other sections in that Regulation respecting decisions given against a Collector in any *Zila* Court in suits instituted against him by any proprietor or farmer of land, for sums of money demanded or actually received by him as arrears of revenue, are to be held applicable to such decree, with this difference, that the suit, from the commencement of it, is to be defended or carried on at the expense of Government, and in the event of the Board

¹These words were substituted for the words "to Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The Bengal Decennial Settlement Regulation, 1793.

³The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

⁴Ben. Reg. XIV of 1793 was repealed by the Repealing Act, 187 (XVI of 1874); but this reference is saved by the proviso to that Act.

of 1793.]

(Secs. 11—15.)

of Revenue not deeming it proper to order an appeal from the decision of the Zila Court to be preferred
 1* * * * to the *Sadar Diwani Adalat*,
 2* * * * they are to report their reasons
 3* * * for not preferring the appeal to the * [Provincial Government], who will direct the cause to be appealed or not, in either case, as may appear to ⁵ [it] proper.

11. [Courts to award costs in case of groundless prosecution.] Rep. by the Bengal Land-revenue Assessment (*Resumed Lands*), Regulation, 1819 (II of 1819).

12. If it shall appear to any Court of Judicature, during the course of a trial, that a grant has been forged, or that the name of the original grantee has been erased and any other name substituted, or that any name not in the original grant has been inserted, or that the denomination or the terms of the tenure in the original grant have been erased or altered, or that date of the grant has been changed or that the grant has been ante-dated, the grant shall be adjudged null and void.

Grants forged or altered in any respect, or ante-dated, declared void.

13. [Persons concerned in frauds liable to criminal prosecution.] Rep. by the Repealing Act, 1874 (XVI of 1874).

14. [Revenue to be paid from date of first decree of resumption.] Rep. by the Bengal Land-revenue Assessment (*Resumed Lands*) Regulation, 1819 (II of 1819).

15. *Altamgha*, *aima* and *madadmash* grants are to be considered as hereditary tenures.

Transfer of grants.

These and other grants, which from the terms or nature of them may be hereditary and are declared valid by this Regulation, or which have been or may be

¹The words "to the Provincial Court of Appeal, or from the decision of the Provincial Court," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words "in the event of their ordering the cause to be appealed to the Provincial Court, and of its being given against them therein," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words "in both cases," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴See foot-note 1 on p. 68, *ante*.

⁵The word "him", in the original text, is to be read as if the word "it" were substituted therefor—see the Amending Act, 1903 (1 of 1903).

(Secs. 16—21.)

confirmed by ¹[the Crown], or any of its officers possessing competent authority to confirm them, are declared transferable by gift, sale or otherwise, and all persons succeeding to such grants, by whatever mode, are required to register their names in the office of the Collector, within six months after they may succeed to the grant.

But all such purchases are to be considered as made at the risk of the purchaser; and in the event of the grant not proving to be hereditary, or not to have been made or confirmed by ¹[the Crown], or its officers possessing competent authority, the transfer is not to preclude the land from being subjected to the payment of revenue under this Regulation.

Jagirs are to be considered as life-tenures only, and with all other life-tenures are to expire with the life of the grantee, unless otherwise expressed in the grant.

16 to 18. [*Record of lands which may become liable to, or exempt from, the payment of revenue; register of badshahi grants; form of periodical register.*] Rep. by the Land Registration Act, 1876 (Ben. Act VII of 1876).

Time for
registry.

19. All persons actually holding lands exempt from the payment of public revenue under *badshahi* grants, and whether made or confirmed by the Government of the country for the time being, or by whatever authority, shall be allowed one year, from the date of the publication prescribed in the following section, to register the required particulars respecting their grants in the office of the Collector of the Revenue of the *zila* in which the lands may be situated.

20. [*Publication to be made, requiring all persons to register grants.*] Rep. by the Amending Act, 1903 (1 of 1903).

Grants not
registered
within pre-
scribed time
liable to
resumption.

21. If any person in possession of any such grant that may be now in force shall omit to register it by the time prescribed in the publication, together with as accurate a detail of the particulars thereby required as he may be able to furnish, the grant shall, by such omission, become subject to resumption, and the lands shall become liable to the payment of revenue to Government.

The ²[Provincial Government], however, reserves to ³[itself] the power of admitting any grant upon the

¹These words were substituted for the words "the British Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order. 1937.

²These words were substituted for the words "Governor General in Council", *ibid.*

³This word was substituted for the word "himself" by paragraph 5(2), *ibid.*

of 1793.]

(Secs. 22—33.)

register after the expiration of the prescribed time, in the event of the possessor showing good and sufficient cause, to ¹[its] satisfaction, for not having registered it within the limited period, and the Board of Revenue are to report to the ²[Provincial Government] every case in which persons who may have omitted to register their grants as required, may appear to them entitled to have their grants admitted upon the register.

22. After the expiration of the period limited for registering grants, all grants not registered within the prescribed time, and which may not be subsequently admitted on the register by the ²[Provincial Government], are declared forfeited, and the lands shall be assessed with revenue, agreeably to the rules prescribed for the decennial settlement.

Grants not registered considered forfeited.

23. It is expressly declared, however, that the registry of a grant under this Regulation is not to be considered as an admission of the right of the person in whose name it may be registered, to the property in the soil, nor of the validity of his grant.

Effect of registry of grants.

Any person will be at liberty to sue in the *Diwani Adalat* for the former, and he will be liable to be sued for the resumption of the grant by the Collector, with the sanction of the Board of Revenue, in the event of it appearing to that Board that the grant is invalid.

24. [*Preparation of register upon expiration of period limited for registry of grants.*] Rep. by the Land Registration Act, 1876 (Ben. Act VII of 1876).

25. [*Preparation of second periodical register.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

26 to 29. [*Counterpart register by whom to be kept, in what native languages; manner of recording resumptions, etc.; documents respecting grants by whom to be furnished.*] Rep. by the Land Registration Act, 1876 (Ben. Act VII of 1876).

30. [*Separations and annexations of exempted lands how notified to Courts.*] Rep. by the Amending Act, 1903 (1 of 1903) .

31 to 33. [*Register of intermediate occurrences not to fall into arrear; counterpart of same by whom to be kept; manner of correcting errors in registers.*] Rep. by the Land Registration Act, 1876 (Ben. Act VII of 1876).

¹This word was substituted for the word "his", by paragraph 5 (2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 2 on p. 72, ante.

[Ben. Reg. XXXVII of 1793.]

(Secs. 34-42.)

34. [*Manner of correcting errors in counterpart registers.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

35 to 41. [*Registry in case of proprietary right being under litigation; penalty for not furnishing information; to whom copies of periodical registers are to be sent; registers to be carefully preserved; from what materials the periodical register commencing with 1207 and subsequent registers, are to be formed; penalty for receiving bribes.*] Rep. by the Land Registration Act, 1876 (Ben. Act VII of 1876).

Regulation
not to extend
to grants not
badshahi.

42. No part of this Regulation is to be considered to extend to lands held, or stated to be held, exempt from the payment of public revenue under grants not being of the description of those termed *badshahi* or royal.

The rules applicable to such grants are contained in Regulation XIX, 1793¹.

¹The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

Bengal Regulation XXXVIII of 1793

[The Indian Civil Service (Bengal) Loans Prohibition Regulation, 1793.]¹

(1st May 1793.)

A regulation for re-enacting, with modifications, such part of the Rule passed on the 27th June, 1787, as prohibits covenanted Civil Servants of the ²[Crown] employed in the administration of justice or the collection of the public revenue lending money to zamindars, independent talukdars or other actual proprietors of land, or dependent talukdars or farmers of land holding farms immediately of Government, or the under-farmers or raiyats of the several descriptions of proprietors and farmers of land above-mentioned, or their respective sureties

1. At an early period after the establishment of the British Government in this country the servants of the Company employed in the administration of justice and the collection of revenue were prohibited from lending money to the land-holders and farmers, and others concerned in the collection or payment of the revenue, in order to guard against the abuses that the powers with which they were invested would have enabled them to practise, had they been permitted to engage in such transactions with individuals subject to their official control and authority. **Preamble.**

¹**SHORT TITLE.**—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—Ss. 1 and 2 of this Regulation have been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

The same sections have been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri and the Western Duars, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

²This word was substituted for the word "Company" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The remainder of the title, which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

[Ben. Reg. XXXVIII of 1793.]

(Secs. 2—6.)

This rule was incorporated with the Judicial Regulations passed on the 5th July, 1781, and has since continued in force.

The rules above mentioned are hereby re-enacted with modifications.

Covenanted
servants
prohibited
lending money
to proprietors,
etc., of land.

2. The Judges and Magistrates of the *Zila* ** * Courts ** * and their Assistants, or other officers being covenanted servants of the '[Crown], and the Collectors of the revenue and their Assistants, are prohibited lending money, directly or indirectly, to any proprietor or farmer of land, or dependent *talukdar*, or under-farmer or *raiyat*, or their sureties; and all such loans as ** * may be hereafter made are declared not recoverable in any Court of Judicature.

3 to 6. [*Europeans possessing land liable to be dispossessed; European mortgagees not to have possession of land; land held by Europeans to be measured; annual statements of land held by Europeans to be sent to Board of Revenue.*] Rep. by the Repealing Act, 1868 (VIII of 1868).

¹Portion of s. 1 which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

²The words "and City", which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words "the Judges of the Provincial Courts of Appeal and the Courts of Circuit, and the Registers to their respective Courts", which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴See foot-note 2 on p. 75, *ante*.

⁵The words "have been made in opposition to the repeated prohibitions of Government or which," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

Bengal Regulation III of 1794

(The Bengal Native Revenue-officers Regulation, 1794.)¹

(14th March 1794.)

A Regulation 2 * * for prescribing the process by which tahsildars are to demand payment of arrears; and for enabling the Collectors to recover from Native officers employed under them public 3* * papers which they may 4* * * retain 5* .*

1 to 11. [*Revenue when payable; restriction on confinement for arrears; demand of arrears; sale; penalty on defaulters; recovery of takavi; attachment of lands; resistance to attachment; partial repeal of Reg. XIV of 1793.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

12. [*Recovery by proprietors and farmers of land of sums exacted from them beyond their engagements.*] Rep. by the Public Demands Recovery Act, 1880 (Ben. Act VII of 1880).

13. When arrears shall become due from proprietors or farmers of land, whose revenue may be made payable to a *tahsildar* or other officer appointed by [the Provincial Government] to collect it, such officer

How *tahsildars* or other public officers are to require payment of arrears from proprietors or farmers paying revenue to them.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903).

LOCAL EXTENT.—This regulation (ss. 13, 16 to 18 and 20) has been declared by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4 (2).

²The words "for exempting proprietors of land (with certain exceptions) from being confined for arrears of revenue," which were repealed by the Amending Act, 1891 (XII of 1891) are omitted.

³The words "money or," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁴The words "embezzle or," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁵The words "and for expediting the trial of causes relating to the public revenue or the rents of individuals," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁶These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Secs. 14-16.)

is to demand the payment of the arrears by the same process as Collectors are required to observe in requiring the discharge of arrears * * *.

If the defaulter shall not liquidate the arrears by the prescribed period, the *tahsildar* or other officer is to report the amount of the arrear to the Collector, who is to proceed to the recovery of it by the same process as he is directed to observe in recovering arrears due from proprietors or farmers paying revenue immediately to the treasury of the *zila*.

14, 15. [*Imprisonment under Reg. XIV of 1793; security for personal appearance of Native officers.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

Collectors
how to
proceed to
recover papers
in possession
of Native
officers.

16. If a Collector shall have a claim, on the part of ¹[the Provincial Government], on any of the Native officers described in the preceding section, for ²* * * papers belonging to ³[the Provincial Government], he is to require ⁴* * * the delivery of the papers, by a writing under his official seal and signature and the signature of his ⁵* * * head Native officer of his *daftar* for the time being specifying ⁶* * * the particular papers required, and the date and place that may be fixed for the delivery of the ⁷* * * papers.

If the officer shall not ⁸* * * deliver up the papers by the limited time, the Collector is empowered to apprehend him, and convey him to the gaol of the

¹The words and figures "by section 3, Regulation 14, 1793," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²S. 16, so far as it relates to the recovery of money belonging to the Government, was repealed by the Public Demands Recovery Act, 1880 (Ben. Act VII of 1880).

³See foot-note 6 on p. 77, *ante*.

⁴The words "a balance of accounts, or money or," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁵The words "the payment of the money or," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁶The words "*diwan* or other," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

⁷The words "the amount of the money or," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁸The words "money or," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁹The words "discharge the money or," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

of 1794.]

(Secs. 17, 18.)

Diwani Adalat of the *zila*, the Judge of which Court shall detain him in confinement until ^{1*} * * * he shall have delivered up the papers.

In the event of the death of any such officer, the surety is to be exonerated from all responsibility, and the Collector is to proceed against his heirs, by a regular suit in the Court to which they may be amenable, for any claims which ²[the Provincial Government] may have upon the deceased.

The suit is to be carried on by the *vakil* of ³[the Provincial Government] and at the public expense, and the rules in Regulation XIV, 1793⁴, regarding suits so carried on by the Collectors, are to be held applicable to it.

⁵17. If any such Native officer, who may have retained public ^{6*} * papers in his possession, shall abscond or not be forthcoming, the Collector may proceed against the surety upon his engagement, or apprehend the offender and commit him to prison, if he be within the limits of the *zila*; or, if he shall have taken refuge in any other *zila* ^{7*} * and the Collector shall deem it necessary to require his personal attendance that he may proceed against him instead of his surety, the Collector is to apply to the Judge of the *zila* to request the Judge within whose jurisdiction the officer may be or reside, to cause him to be apprehended.

Collectors how to proceed where officers abscond or are not forthcoming.

The Judge to whom the application may be made is to convey the officer in safe custody to the gaol of the *zila* from which he may have absconded.

⁸18. If a Collector shall have occasion to require any such officer to attend to adjust his accounts, that the sum due from him may be ascertained, and he shall not attend upon being required by writing to that effect, under the official seal and signature of the Collector to

Collector how to proceed in case of officer absconding without having adjusted accounts, or not attending for that purpose.

¹The words "the sum demanded of him shall be discharged or," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

²Certain clauses as to attachment and sale of property, which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

³See foot-note 6 on p. 77, *ante*.

⁴Ben. Reg. XIV of 1793 was repealed by the Repealing Act, 1874 (XVI of 1874); but this reference is saved by the proviso to that Act.

⁵Ss. 17 and 18, so far as they relate to the recovery of money belonging to the Government, were repealed by the Public Demands Recovery Act, 1880 (Ben. Act. VII of 1880).

⁶The words "money or," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁷The words "or in either of the cities of Patna, Dacca, or Murshidabad," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

[Ben. Reg. III of 1794.]

(Secs. 19—22.)

be fixed up in his *cutcherry* and at the place in the *zila* at which the officer may have last resided, the Collector is empowered to prepare the most accurate statement, that he may be able, of the ¹* * * papers in the possession of such officer, and proceed against the surety, upon his engagement, for the ²* * * papers, in the same manner as if the accounts had been adjusted, and the list of the papers prepared in the presence of the officer;

or he may cause the officer to be apprehended by his own authority under section 16, if he be within the limits of the *zila* or, if he shall have taken up his abode in any other *zila*, ³* * * by application to the Judge, in the manner directed in section 17.

If it should afterwards appear, upon inquiry before the Court ⁴* * * that the papers required were not in his possession, the Collector shall not be liable to pay any damages for having confined him, and all costs that may be incurred in the suit or inquiry shall be paid by the officer.

19. [*Officers or sureties confined for money-demand to be released in certain cases.*] Rep. by the Amending Act, 1903 (1 of 1903).

Native officers
or their sure-
ties may sue
Collector
whilst in
confinement.

⁵**20.** If any such Native officer, or his surety, shall be committed to custody by the Collector ⁶* * * he shall ⁷* * * be at liberty, whilst in confinement, to sue the Collector by whom he may have been confined, should he deem the demand upon him unjust.

21, 22. [*Appointment of Vakils to defend certain suits; days to be set aside by certain Courts for trial of suits respecting rent or revenue.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

¹The words "money or," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

²The words "balance or," were repealed, *ibid*.

³The words "or in either of the cities of Patna, Dacca, or Murshidabad," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

⁴The words "that no part, or a portion only, of the sum demanded was due from him, or" which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁵S. 20, so far as it relates to the recovery of money belonging to the Government, was repealed by the Public Demands Recovery Act, 1880 (Ben. Act VII of 1880).

⁶The words and figure "and shall not obtain his release in the mode specified in section 19," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁷The word "nevertheless," was repealed, *ibid*.

Bengal Regulation V of 1799

(The Bengal Wills and Intestacy Regulation, 1799.)¹

(3rd May 1799.)

*A Regulation to limit the interference of the Zila ** * * Courts of Diwani Adalat in the execution of wills and administration to the estates of persons dying intestate.*

1. Doubts having been entertained to what extent, Preamble. and in what manner, the Judges of the Zila ** * Courts of the *Diwani Adalat* in the Provinces of Bengal, [*Bihar, Orissa and Benares,*] are authorised to interfere in cases wherein the inhabitants of the above Provinces may have left wills at their decease, and appointed executors to carry the same into effect, or may have died intestate leaving an estate real or personal; with a view to remove all doubts on the authority of the Zila ** * Courts in such cases, and to apply thereto, as far as possible, the principle ** * * that in suits regarding succession and inheritance the Muhammadan laws with respect to Muhammadans, and the Hindu laws with regard to Hindus, be the general rules for the guidance of the Judges, the Vice-President in Council has passed the following Regulation, to be considered in force from the period of its promulgation, in the above Provinces, respectively.

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see s. 1.

It has been declared by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

²The words "and City," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³The words "and City," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴The words and figures "prescribed in section 15 of Regulation 4, 1793, viz.," were repealed, *ibid.*

(Secs. 2, 3.)

Estates of
Hindus, Mu-
hammadans
and others,
not being
disqualified
landholders,
leaving wills.

¹2. In all cases of a *Hindu*², Mussulman or other person² subject to the jurisdiction of the *Zila* ^{3*} * Courts, having at his death left a will and appointed an executor or executors to carry the same into effect, and in which the heir to the deceased may not be a disqualified landholder subject to the superintendence of the Courts of Wards ^{4*} * * * the executors so appointed are to take charge of the estate of the deceased, and proceed in the execution of their trust according to the will of the deceased and the laws and usages of the country, without any application to the Judge of the *Diwani Adalat* or any other officer of Government for his sanction; and the Courts of Justice are prohibited to interfere in such cases, except on a regular complaint against the executors for a breach of trust or otherwise, when they are to take cognizance of such complaint in common with all others of a civil nature ^{5*} * * .

Estates of
persons dying
intestate.

¹3. In case of a Hindu, Mussalman or other person subject to the jurisdiction of the *Zila* ^{3*} * Courts dying intestate, but leaving a son or other heir, who, by the laws of the country, may be entitled to succeed to the whole estate of the deceased, such heir, if of age and competent to take the possession and management of the estate, or, if under age or incompetent and not under the superintendence of the Court of Wards, his guardian or nearest of kin who, by special appointment or by the law and usage of the country, may be authorized to act for him, is not required to apply to the Courts of Justice for permission to take possession of the estate of the deceased as far as the same can be done without violence; and the Courts of Justice are

¹So much of ss. 2 and 3 as restricts the interference of the Civil Courts in cases of inheritance by minors was repealed by Act XL of 1858 (Minors).

²Section 2 has been repealed (so far as relates to the executors of persons who are not Muhammadans, but are subject to the jurisdiction of a District Court in Bengal) by the Hindu Wills Act, 1870 (XXI of 1870), s. 4.

³The words "or City", which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴The words and figures "under Regulation 10, 1793, or any other Regulation relative to the jurisdiction of the Court of Wards," which were repealed partly by the Repealing Act, 1874 (XVI of 1874), and partly by the Amending Act, 1903 (I of 1903), are omitted.

⁵The rest of s. 2, which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

of 1799.]

(Secs. 4, 5.)

restricted from interference in such cases, except a regular complaint be preferred ¹* * *.

4. If there be more heirs than one to the estate of a person dying intestate, and they can agree amongst themselves in the appointment of a common manager, they are at liberty to take possession, and the Courts of Justice are restricted from interference, without a regular complaint, as in the case of a single heir;

If there be more heirs than one to estate of intestate.

but if the right of succession to the estate be disputed between several claimants, one or more of whom may have taken possession, the Judge, on a regular suit being preferred by the party out of possession, shall take good and sufficient security from the party or parties in possession for his or their compliance with the judgment that may be passed in the suit; or, in default of such security being given within a reasonable period, may give possession, until the suit may be determined, to the other claimant or claimants who may be able to give such security, declaring at the same time that such possession is not in any degree to affect the right of property at issue between the parties, but to be considered merely as an administration to the estate for the benefit of the heirs who may on investigation be found entitled to succeed thereto.

²5. In the event of none of the claimants to the estate of a person dying intestate being able to give the security required by the preceding section, and in all cases wherein there may be no person authorized and willing to take charge of the landed estate of a person deceased, the Judge within whose jurisdiction such estate may be situated (or in which the deceased may have resided, or the principal part of the estate may lie, in the event of its being situated within two or more jurisdictions) is authorized to appoint an administrator for the due care and management of such estate, until, in the former case, the suit depending between the several claimants shall have been determined, or in the latter case until the legal heir to the estate, or other person entitled to receive charge thereof as executor, administrator or otherwise, shall attend and claim the same; when, if the Judge be satisfied that the claim is well founded, or if the same be established after any inquiry that may appear necessary, the administrator appointed by the Court shall deliver over the estate to

In what Judge may appoint administrator for care and management of estate of intestate.

¹The words "when they are to proceed thereupon according to the general Regulations," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²Ss. 5 and 6 have been modified by the Bengal Attached Estates Management Regulation, 1827 (V of 1827).

(Secs. 6, 7.)

him, with a full and just account of all receipts and disbursements during the period of his administration.

Security to be taken from, and allowances paid to, administrators.

¹6. In all instances of an administrator being appointed under this Regulation, he is, previous to entering upon the execution of his office, to give good security for the faithful discharge of his trust in a sum proportionate to the extent thereof; and the Judge appointing him is authorized to fix for him (subject to the approbation of the Court of *Sadar Diwani Adalat*, to whom a report is to be made in such instances) an adequate personal allowance to be paid out of the proceeds of the estate, and to be a percentage thereupon, after deducting the expenses of management.

Procedure in cases of persons dying intestate, leaving personal property to which there is no claimant.

7. The Judges of the *Zila* * * * Courts, on receiving information that any person within their respective jurisdictions has died intestate, leaving personal property, and that there is no claimant to such property, are to adopt such measures as may be necessary for the temporary care of the property, and to issue an advertisement in the current languages of the country, requiring the heir of the deceased, or any person entitled to receive charge of his effects, to attend for this purpose.

Such advertisement to be published on the spot where the property was found, at the *Diwani Adalat cutcherry* of the *Zila* * * *, and, if ascertainable, at the dwelling-place of the deceased * * * ; after which, should any person attend and satisfy the Judge of his title to the property, or to receive charge thereof as executor, administrator or otherwise, the same is to be delivered up to him, on repayment of any necessary expense incurred in the care of it.

Should no claim be preferred within the twelve months next ensuing, an inventory of the property and report of the circumstances of the case is to be transmitted to the ⁴[Board of Revenue, or, in Assam, to the ⁵Provincial Government, for its] orders.

¹Ss. 5 and 6 have been modified by the Bengal Attached Estates Management Regulation, 1827 (V of 1827).

²The words "or City," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words "or, if the deceased were a European, in the *Calcutta Gazette*," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁴These words were substituted for the words "Governor General in Council for his" by the Decentralization Act, 1914 (IV of 1914).

⁵The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1793.]

(Sec. 8.)

8. Nothing in this Regulation is to be understood to limit or alter the jurisdiction of the Court of Wards in the appointment of managers or guardians for ¹* * disqualified landholders, ¹* * or in any case wherein a special power may be vested in the Court of Wards

Saving of
jurisdiction of
Court of
Wards.

¹The word "the", the words and figures "described in Regulation 10, 1793," and the words "by the above or any other Regulation" respectively, which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

Bengal Regulation VIII of 1800

(The Bengal Revenue-free Lands Regulation, 1800.)¹

(3rd July 1800.)

*A Regulation for * * * registers of estates paying revenue, and lands held exempt from the payment of revenue.*

1 to 18. [*Formation of pargana registers; divisions in same; period for preparing same; forms of register; materials for preparing same; repeal of certain enactments; explanation of the term "estate"; insertion in registers of alterations in annual revenue; copies of registers to be sent to Board of Revenue; new forms of registers; establishment.*] *Rep. by the Land Registration Act, 1876 (Ben. Act VII of 1876).*

19. By section 26, Regulation XIX, 1793³, section 21, Regulation XXXVII, 1793⁴, [*and the corresponding sections in Regulations XLI⁵ and XLII⁵, 1795,*] all lands held exempt from the payment of revenue, which the holders may have omitted to register by the time prescribed in the publication therein referred to, are become subject to the payment of revenue, unless sufficient cause be shown, to the satisfaction of the '[Central Government], for their not having been registered within the limited period.

Extension of period for registration of revenue-free grants, and assessment thereafter of all unregistered lands.

It appearing, however, that the publications directed in section 25, Regulation XIX, 1793³, section 20, Regulation XXXVII, 1793⁴, [*and the corresponding sections in Regulations XLI⁵ and XLII⁵, 1795,*] have

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4 (2).

²The words "preparing a general *pargana* register of lands, and for certain alterations in the prescribed," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

⁴The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.

⁵Bengal Regulations XLI and XLII of 1795 were repealed by the North-Western Provinces Land-revenue Act, 1873 (XIX of 1873).

⁶These words were substituted for the words "Governor General in Council" by paragraph 4 (I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Reg. VIII of 1800.]

(Secs. 20—22.)

not in every instance been made as therein directed (namely, the publication respecting lands held under *badshahi* grants in the principal *cutcherry* of the holders of such grants; and respecting other exempted lands in the principal *cutcherry* of every proprietor and farmer of land paying revenue to Government and of every Native Collector in lands held *khas* by Government; or when the estate, farm or *khas* land may consist of two or more whole *parganas*, or portions of *parganas*, in the principal *cutcherry* of each *pargana* or portion of a *pargana* comprised in such estate, farm or *khas* land), the Collectors are hereby further directed, immediately on the receipt of this Regulation, to ascertain whether the publications above specified have been duly made as prescribed throughout their respective Collectorships; and, if not, they are to cause the same to be made without delay, in the manner prescribed, as well as in their own *cutcheries*, and in the *cutcheries* of the *Diwani* Courts situated within their respective *zilas*; allowing the further period of one year from the date of such publications for the registry of the lands therein specified.

After the expiration of such period any unregistered land found to be held exempt from the payment of revenue is to be assessed, under the provisions contained in the above Regulations, whenever the same may be discovered;

and the Collectors are to enter lands so assessed (together with all other *lakhiraj* lands which may be brought upon the public assessment) in their succeeding * * register of estates paying revenue, as well as in their register of intermediate mutations.

20 to 22. [*Notice of establishment of new villages and by persons succeeding to landed property; Kanungos' records to be delivered to Collector.*] Rep. by the Land Registration Act, 1876 (Ben. Act VII of 1876).

¹The word "quinquennial", which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

Bengal Regulation X of 1800

(The Bengal Inheritance Regulation, 1800.)¹

(11th December 1800.)

A Regulation for preventing the division of landed estates in the Jungle Mahals of the Zila of Midnapore and other Districts.

1. By Regulation XI, 1793,² the estates of proprietors of land dying intestate are declared liable to be divided among the heirs of the deceased agreeably to the Hindu or Muhammadan laws. Preamble.

A custom, however, having been found to prevail in the jungle *mahals* of Midnapore and other districts, by which the succession to landed estates invariably devolves to a single heir without the division of the property, and this custom having been long established, and being founded in certain circumstances of local convenience which still exist, the Governor General in Council has enacted the following rules to be in force in the Provinces of Bengal, [*Bihar and Orissa*] from the date of its promulgation.

2. Regulation XI, 1793², shall not be considered to supersede or affect any established usage which may have obtained in the jungle *mahals* of Midnapore and other districts, by which the succession to landed estates, the proprietor of which may die intestate, has hitherto been considered to devolve to a single heir, to the exclusion of the other heirs of the deceased. Regulation XI, 1793, not to operate in jungle mahals of Midnapore and other districts.

In the *mahals* in question the local custom of the country shall be continued in full force as heretofore, and the Courts of Justice be guided by it in the decision of all claims which may come before them to the inheritance of landed property situated in those *mahals*.

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal (*see s. 1*), and was extended to the *Parganas* of Pataspur and Bograi in the district of Midnapore in Bengal by the Cuttack Land-revenue Regulation, 1805 (XII of 1805), s. 36.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4 (2).

²The Bengal Inheritance Regulation, 1793.

Bengal Regulation I of 1801

(The Bengal Land-revenue Assessment Regulation, 1801.)¹

(15th January 1801.)

*A Regulation * * * to explain and amend the rules * * * for the division of joint estates, and allotment of the fixed assessment thereupon * * *.*

1, 2. [*Local extent; attachment of estate or farm for arrears of revenue.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

3. [*Immediate sale of attached estates, on proprietors refusing to furnish accounts.*] *Rep. by the Bengal Government Indemnity Regulation, 1822 (XI of 1822).*

4. [*Distress and sale of personal property in certain cases.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

5 to 7. [*Sale of estates in one or more lots.*] *Rep. by the Bengal Government Indemnity Regulation, 1822 (XI of 1822).*

8. Section 10, Regulation 1, 1793³, prescribes the general rule and principle for the allotment of the fixed assessment upon all divisions of estates, whether publicly sold or transferred by the private act of the proprietors, namely, that the assessment upon the portion of the estate to be separated shall bear the same proportion to its actual produce as the fixed assessment upon the whole estate may bear to its actual produce.

Section 10, Regulation 1, 1793, to be observed in all cases of public sale and private transfer or division.

This rule is to be strictly observed in all cases, whether of public sale or private transfer, or of division between sharers, heirs or joint proprietors of whatever description;

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

The Regulation has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

²Words and figures in the title, which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³The Bengal Permanent Settlement Regulation, 1793.

(Sec. 8.)

“Actual
produce”
defined.

and it is hereby explained that by the term “actual produce” is to be understood the neat annual rent, or other neat produce receivable by the proprietor, after deducting from the gross rent, or other gross produce, the actual expense of collection and other usual charges of management, inclusive of *pulbandi* or the expense of embankments, and similar incidental expenses, where such may be paid by the proprietor from his gross receipts; but, exclusive of his *malikana* or proprietary income, and all other personal appropriations of the gross produce of his estate, as such can have no claim to consideration in determining the neat produce for an equal division of landed property, or for the allotment of the public assessment thereto in conformity to the prescribed rule.

But the above Regulation further provides that the produce to which the general rule of proportion is to be applied shall be ascertained in the mode that is or may be prescribed by the [Central Government]
* * *

Procedure of
officer charged
with allot-
ment of
assessment
of portion of
estate, should
he doubt
accuracy of
patwari
accounts, or
they be not
forthcoming.

It is hereby enacted that whenever the Collector or other public officer, to whom the allotment of the assessment upon the portion of an estate may be committed, shall have reason to suspect the accuracy of the village-accounts produced by a *patwari*, * * * *;

or if such accounts shall be found to have been fabricated or altered, or not to be the true accounts,
* * * *;

or if in any case the true village-accounts of the lands, rents, receipts and disbursements may not be forthcoming, but the Collector or other officer, under the powers vested in him * * * *, shall have obtained

¹These words were substituted for the words “Governor General in Council” by paragraph 4 (f) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words and figures “and the *patwari* accounts furnished in pursuance of clause *Fourth* of section 62, Regulation 8, 1793, for the allotment of the public revenue agreeably to the principles laid down in Regulation 1, 1793, having in many instances proved fallacious or unsatisfactory, and in some instances not being procurable by the officers of Government,” which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

³The words and figures “in pursuance of clause *Fourth* of section 62, Regulation 8, 1793, or of any other Regulation,” which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁴The words “under the process prescribed in clause *Eighth* of the above section and Regulation,” which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁵The words and figures “by clause *First* of section 29, Regulation 7, 1799, or any other Regulation,” which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

of 1801.]

(Secs. 9, 10.)

satisfactory accounts for the three past years of the lands and rents of the entire *zamindari*, *taluk* or other estate, with a specification of the *mahal* or *mahals* proposed to be separately assessed,

he shall adjust the assessment upon such *mahal* or *mahals*, under the general rule of proportion, according to the average neat produce (as above explained) ascertainable from the general accounts of the estate so obtained, without further regard to the village-accounts than may appear to him proper, with a view to compare and check the other accounts:

Provided, however, that in all cases the Collector or other officer shall adopt every authorized measure to obtain the most accurate accounts procurable, and shall fully satisfy himself that the accounts from which he may compute the neat produce of an estate to be divided and distinctly assessed are sufficiently accurate to prevent any risk of loss to Government from the proposed allotment of the assessment; without evidence of which no distinct assessment is to be proposed by any Collector or approved by the Board of Revenue:

Provided further that nothing in this Regulation shall be understood to authorize the Collectors to fix the amount of the assessment to be allotted upon the portion of an estate, whether publicly or privately disposed of, without the sanction of the Board of Revenue
* * *

Collectors
not to fix
assessment
on portion of
estate, with-
out Board's
sanction.

9. [Statement of land for sale to be submitted without delay.] Rep. by the Repealing Act, 1874 (XVI of 1874).

10. All purchasers of lands at the public sales are required to attend the Collector of the district wherein the lands may be situated, either in person or by their representatives duly authorized, and to execute the usual *kabuliyat* and *kistbandi* for the public revenue assessed upon the lands purchased by them.

Collectors
authorized to
cause attend-
ance of land-
holder or
other Native.

¹The words and figures "or to alter the provisions made for the correction of error or collusion in such allotments, by section 25, Regulation 25, 1793, in cases of private divisions of estates, and by clause Second of section 29, Regulation 7, 1799, in cases of public sales," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The rest of s. 8, which was repealed by the Amending Act, 1903 (I of 1903), is omitted.

(Secs. 11—13.)

In cases of doubt as to the real purchase ^{1*} * * the Collector is authorized to cause the personal attendance of the alleged purchaser at his *cutcherry* if resident within his jurisdiction; or, if the purchaser be resident in any other *zila*, the Collector of such *zila* is authorized and required to cause the attendance of the purchaser at his *cutcherry* on the application of the Collector in whose district the lands may lie, and to make any examination or inquiry that may be desired by the latter Collector or by the Board of Revenue, to whom a full report is to be made in such cases ^{2*} * *.

It is further hereby declared that the Collectors are generally empowered to cause the personal attendance of any landholder or other Native inhabitant within their respective jurisdictions, when the attendance of such person may be indispensably necessary for the purpose of any authorized public inquiry, or to enable them to perform any part of their public duty, under the Regulations or instructions of the ^{3*} * Board of Revenue.

But no Collector shall cause the personal attendance of any landholder or other person who may appoint an agent duly authorized to attend for him if the attendance of the agent so appointed shall be sufficient for the purpose required.

Any infringement of this rule will subject the Collectors to a prosecution for damages in the Civil Courts;

and, whenever they may have occasion to exercise the power now declared to be vested in them, they are to issue regular summonses, under their official seals and signatures, specifying the name, designation and residence of the party summoned, and the purpose or purposes for which his attendance is required.

11. [*Sale of shares in an undivided estate.*] *Rep. by the Bengal Government Indemnity Regulation, 1822 (XI of 1822).*

12, 13. [*Division of joint estates, and allotment of the assessment.*] *Rep. by Ben. Reg. XIX of 1814.*

¹The words and figures "or of suspicion that the purchase has been made in opposition to the rules contained in clauses *Third* and *Fourth* of section 29, Regulation 7, 1799", which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words and figures "for the orders of the Governor General in Council, as directed in clause *Fourth* of section 29, Regulation 7, 1799", which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words "Governor General in Council or," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

Not to enforce personal attendance of principal if that of agent will suffice.

Effect of infringement of rule. Summons to persons whose attendance is required.

of 1801.]

(Sec. 14.)

14.

The rules regarding separable *taluks* contained in Regulation VIII, 1793,² were never meant to be applied to any new *taluks* constituted since the period of the decennial settlement.

Rules regarding separable *taluks* not applicable to *taluk* constituted since decennial settlement.

By section 9, Regulation 1, 1793³, the *zamindars* and all other proprietors of land have been declared at liberty to transfer by sale, gift or otherwise their proprietary rights in the whole or any portion of their respective estates; but by section 10 of the same Regulation it is required that all such transfers be notified to the Collector of the *zila*; that the fixed *jama* assessed upon the whole estate may be apportioned on the several shares in the manner therein prescribed; that the names of the proprietors of each share and the *jama* assessed thereon may be entered upon the public registers, and that separate engagements for the payment of the *jama* assessed upon each share may be executed by the proprietors, who are thenceforward to be considered separate proprietors of distinct estates; but until such notification and separation shall have been made the whole of the estate is declared responsible to Government for the discharge of the fixed *jama* assessed upon it, in the same manner as if no transfer had taken place.

If, therefore, any *zamindar* shall have disposed of his proprietary rights in any portion of his *zamindari* subsequently to the promulgation of the Regulation above-mentioned, whether under the denomination of an independent *taluk* or otherwise, and the *talukdar* or other person to whom the portion of an estate may have been so transferred shall have omitted to obtain a separate allotment of the public assessment thereon, in the mode prescribed by the regulations, such transfer, as far as respects the rights of Government, must be considered altogether invalid;

Transfer of proprietary right in portions of estates in certain cases declared invalid as far as respects rights of Government.

and if the land so privately transferred, but not separately assessed, should have been since, or shall be

¹Portion of s. 14 which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

²The Bengal Decennial Settlement Regulation, 1793.

³The Bengal Permanent Settlement Regulation, 1793.

⁴The words and figures "This declaration is also repeated in section 28, Regulation 25, 1793, which contains the specific rules established by Government for the division of estates paying revenue, and the allotment of the *jama* upon the several portions thereof," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

[Ben. Reg. I of 1801.]

(Sec. 15.)

hereafter, included in any public sale for arrears of revenue, the illicit and imperfect private transfer must be deemed to have been altogether done away.

In such cases the lands transferred, until publicly registered and separately assessed, form part of an undivided estate; and as such are liable to be sold for any arrear of revenue which may be due from any part of the estate :

Provided, however, that nothing in this section be considered applicable to dependent *taluks*, or other tenures dependent on the estate to which they are attached, and from which, by their title-deeds or otherwise, they are not entitled to be separated as a distinct estate ^{1*} * * .

15. [*Applicability of certain rules to Benares.*]
Rep. by the Repealing Act, 1874 (XVI of 1874).

¹The words and figures "section 6, Regulation 44, 1793, authorizes and confirms such tenures, subject to the restrictions contained in sections 2 and 5 of that Regulation; with the explanation of the latter in section 7, Regulation 4, 1794, and clause *Fifth* of section 29, Regulation 7, 1799," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

Section not
to apply to
dependent
tenures.

Bengal Regulation XII of 1805.

(The Cuttack Land-revenue Regulation, 1805.)

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Bengal Regulation XII of 1805.

(The Cuttack Land-revenue Regulation, 1805.)¹

(5th September 1805.)

A Regulation for the settlement and collection of the public revenue in [the Zila of Cuttack, including] the parganas of Pataspur, [Kamardachor] and Bhograi, at present included in the zila of Midnapore.

1. Whereas it is necessary that fixed rules should be established for the settlement and collection of the public revenue in the *zila* of Cuttack:² Preamble.

And whereas it has been judged to be advisable to extend the Regulations in force for the settlement and collections of the public revenue in the Province of Bengal, with certain modifications and exceptions, to the *zila* of Cuttack:²

The following rules have been enacted, and are to be in force from the period of the promulgation of this Regulation.

2 to 11. [*Confirmation, with modifications, of Proclamation as to settlement of land-revenue in the Moghalbandi territory of the zila of Cuttack; registration of landed property.*] Rep. by the Amending Act, 1903 (1 of 1903).

12 to 16. [*Extention of the Stamp Regulations to Cuttack; coinage in which settlement is to be made and revenue paid; bonds dischargeable in sicca rupees; engagements for coins other than siccas or gold mohurs not to be enforced.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

17. The following rules, containing modifications of the provisions contained in Regulation XIX, 1793,⁴ Modification of Regulation XIX, 1793.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903).

LOCAL EXTENT.—This Regulation extends to the *parganas* of Pataspur and Bhograi (*see* the title), which now form part of the district of Midnapore in Bengal.

²This includes the *parganas* of Pataspur and Bhograi (*see* the title to this Regulation), which now form part of the district of Midnapore.

³Portion of section 1 which was repealed by the Amending Act, 1903 (1 of 1903), is omitted.

⁴The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

(Sec. 18.)

respecting lands exempt from the payment of revenue under grants not being *badshahi* or royal, shall be in force in the *zila of Cuttack*¹.

Validity of
grants of
alienated
lands made
before 14th
October, 1791.

18. First.—All grants for holding land exempt from the payment of revenue, made previously to the 14th day of October, 1791, corresponding with the 30th *Assin*, 1198, Bengal era; [*the 3rd Kartik, 1199, Fasli*;] the 30th *Assin*, 1199, *Wilayati*; [*the 3rd Kartik, 1848, Sambat; and the 15th Safr 1207, Hijri*,] by whatever authority, and whether by a writing, or without a writing, shall be deemed valid, provided that the grantee actually and *bonâ fide* obtained possession of the land so granted, and held it exempt from the payment of revenue, previously to the date above-mentioned, and that the land shall not have been subsequently rendered subject to the payment of revenue by the officers or the orders of the Government.

If it shall be proved to the satisfaction of the Court that the grantee did not obtain possession of the land so granted, or did not hold it exempt from the payment of revenue previously to the date above specified, or that he did obtain possession of it prior to that date but that it has been since subjected to the payment of revenue by the officers or the orders of Government, the grant shall not be deemed valid.

Validity of
grants made
after 14th
October, 1791,
and confirmed
or admitted
before 14th
October, 1803.

Second.—All grants for holding land exempt from the payment of revenue, which may have been made subsequently to the 14th day of October, 1791, and prior to the 14th day of October, 1803, by whatever authority, and which may have been confirmed or expressly admitted antecedently to the 14th day of October, 1803, by the authority of the existing Government, shall be deemed valid, provided the grantee actually and *bonâ fide* obtain possession of the land so granted, and held the same exempt from the payment of revenue, previously to the 14th day of October, 1803, and the land shall not have been afterwards rendered subject to the payment of revenue by the officers or the orders of the late Government.

If it shall be proved, to the satisfaction of the Court, that the grantee did not obtain possession of the land so granted, or did not hold it exempt from the payment of revenue, previously to the 14th day of October, 1803, or that he did obtain possession of it prior to that date, but that it has been since subjected

¹This includes the *parganas* of Potaipur and Bbogra (see the title to this Regulation) which now form part of the district of Midnapore.

of 1805.]

(Sec. 18.)

to the payment of revenue by the officers or the orders of the late Government, the grant shall not be deemed valid.

Third.—In the event of a claim being preferred by any person to hold land exempt from the payment of revenue, under a grant made previously to the 14th day of October, 1791, or under a grant made subsequent to that date, but prior to the 14th day of October, 1803, and confirmed or admitted by the authority of the existing Government, and of its being proved to the satisfaction of the Court in which the suit may be instituted in the first instance, or to which it may be appealed, that the grantee held the land exempt from the payment of revenue previously to the date specified, but that it was afterwards subjected to the payment of revenue by an officer of Government, and the Court shall entertain doubts as to the competency of such officer, under the powers vested in him, to subject the land to the payment of revenue, the Court shall suspend its judgment, and report the circumstances to the ¹[Provincial Government,] to whom a power is reserved of determining whether such officer was or was not competent to subject the land to the payment of revenue; and, upon receiving the determination of the ¹[Provincial Government,] the Court is to decide accordingly.

Reference of doubtful claims to Provincial Government.

In like manner the ¹[Provincial Government] reserves to ²[itself] the power of determining, in cases of doubt, whether any officer of the *Raja* of Birar who may have made, confirmed or admitted grants of land exempt from the payment of revenue in the name or on the part of the *Raja* was competent to exercise such authority.

The Courts of Judicature shall accordingly suspend their judgment in cases of the above nature, and report the circumstances for the decision of the ¹[Provincial Government].

Fourth.—But no part of the three preceding clauses shall be construed to empower the Courts to adjudge any person, not being the original grantee, entitled to hold land now paying revenue to Government, exempt from the payment of revenue, under any grant made

Rules respecting grants for life only.

¹These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The word "himself" in the original text, is to be read as if the word "itself" were substituted therefor—see the Amending Act, 1903 (1 of 1903).

(Sec. 18.)

previously to the 14th day of October, 1803, the writing for which may expressly specify it to have been given for the life of the grantee only;

or supposing no such specification to have been made in writing, or the writing not to be forthcoming, or no writing to have been executed, where the grant, from the nature and denomination of it, shall be proved to be a life-tenure only, according to the ancient usage of the country.

Heirs of
present
possessors.

Fifth.—Nor to entitle the heirs of any person now holding land exempt from the payment of public revenue, under whatever grant, to succeed to and hold such land exempt from the payment of revenue upon the demise of the present possessor, where the writing for such grant may expressly specify it to have been given for the life of the grantee only; or supposing no such specification to have been made in the writing, or the writing not to be forthcoming, or no writing to have been executed, where, from the nature and denomination of the grant, it shall be proved to be a life-tenure only, according to the ancient usages of the country.

Nor to entitle the heirs to any such person to hold the lands exempt from the payment of revenue after his demise, supposing the writing for the grant not to specify whether it was to be considered hereditary or otherwise, unless it shall be proved, to the satisfaction of the Court, that the grant, from the nature and denomination of it, is hereditary, according to the ancient usages of the country.

But upon the demise of the present possessor of any such grant which may be adjudged not hereditary under this clause, if it shall appear that one or more successions, in virtue of whatever right, shall have taken place before the 14th day of October, 1803, the lands shall not be subjected to the payment of revenue under the decree without the sanction of the ¹[Provincial Government] to whom a copy of the proceedings and decree of the Court is to be transmitted, and to whom is reserved a power of declaring the lands subject to the payment of revenue, or not, as may appear to ²[it] proper.

Present
possessors
not to
transfer or
mortgage
grants.

Sixth.—The present possessors of lands held exempt from the payment of revenue, under all life-grants declared by the preceding clause not to be hereditary,

¹See foot-note 1 on p. 101, *ante*.

²The word "him", in the original text, is to be read as if the word "it" were substituted therefor—see the Amending Act, 1903 (1 of 1903).

of 1805.]

(Sec. 19.)

are prohibited from selling or otherwise transferring them, or mortgaging the revenue of them for a longer period than their own lives; and all such transfers and mortgages are declared illegal and void:

Seventh.—Provided, however, that nothing herein contained shall authorize the subjecting to the payment of revenue any quantity of land, not exceeding ten *bighas*, held exempt from the payment of revenue under a grant made prior to the 14th day of October, 1803, and *bonâ fide* appropriated as an endowment for temples or for other religious or charitable purposes.

Exemption of certain grants for religious or charitable purposes.

Moreover, if any land so held and appropriated, exceeding ten *bighas*, shall become liable to assessment under the rules contained in this Regulation, and the Judge of the Court before which the suit for the assessment of such land may be depending, or the Collector of the district, if no judicial suit respecting it be depending, shall be of opinion that immediate assessment of such land would be productive of distress, he shall report the same, with the circumstances of the case, for the consideration of the ¹[Provincial Government].

Eighth.—The Courts of Justice shall not take cognizance of any claim to hold exempt from the payment of revenue, under the present Regulation, land which may have been subjected to the payment of revenue for the period of twelve years prior to the 14th day of October, 1803; nor of any claim to hold land exempt from the payment of revenue, which may have been subjected to the payment of revenue for the twelve years preceding the date on which the claim may be instituted, unless the claimant can show good and sufficient cause for not having preferred his claim to a competent jurisdiction within that period.

Courts not to take cognizance of certain claims to hold exempted lands.

19. All grants for holding land exempt from the payment of revenue, which may have been made since the 14th day of October, 1803, corresponding with the 29th *Assin*, 1210, Bengal era; [*the 14th Kartik, 1211, Fasli*]; the 29th *Assin*, 1211, *Wilayat*; [*the 14th Kartik, 1860, Sambat*; and the 27th *Jamadius-Sani, 1218, Hijri*], by any other authority than that of the British Government, and which may not have been confirmed by the ²[Central Government] or by an officer empowered to confirm them are declared invalid.

Grants of land exempt from revenue, made since 14th October, 1803, and not confirmed, declared invalid.

¹See foot-note 1 on p. 101, *ante*.

²These words were substituted for the words "Governor General in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Secs. 20—23).

Procedure
in case of
doubt of
authority
of officer
confirming
grant.

20. If doubts shall be entertained by any Court as to the competency of the authority of any officer to confirm any such grant, the Court is to suspend its judgment, and report the circumstances of the case to the ¹[Provincial Government], to whom a power is reserved of determining finally whether the officer possessed competent authority to confirm the grant, or otherwise; and the Court, upon receiving the determination of the ¹[Provincial Government,] shall decide accordingly.

Assessing
lands resumed
under
sections 18
to 20.

21. The following rule shall be in force in the Province of Cuttack for assessing land declared subject to the payment of revenue to Government under the three foregoing sections of this Regulation:—

Revenue to
belong to
the Crown.

22. *First.*—The revenue assessable on all lands which shall be adjudged or become liable to the payment of revenue, under sections 18, 19 and 20 of the present Regulation, is declared to belong ²[to the Crown].

Assessment
regulated by
rules for
settlement of
revenue-
paying lands.

Second.—The revenue, payable ²[to the Crown], shall be regulated by the rules prescribed by this Regulation for concluding the settlement of lands paying revenue ²[to the Crown], and by any subsequent rules which may be prescribed relative to the assessment of lands subject to the payment of revenue ²[to the Crown].

Procedure
in case
proprietor
refuses to
agree to
assess-
ment.

If the proprietor shall not agree to the assessment so fixed, a report of his objections, and of the circumstances of the case, shall be made by the Collector of the district ³[to the Board of Revenue,] who will determine on the amount of the assessment; and, if the proprietor shall refuse to engage for the same, the lands shall be let in farm or held *khas*, under the rules contained in the existing Regulations.

Periods fixed
for registering
grants and
preparing
periodical
registers.

23. The period of one year, reckoning from the expiration of the current *Wilayati* year 1212⁴, shall be allowed to the proprietors to register their grants.

On the expiration of that period of time, the Collectors shall prepare the first periodical register of lands held exempt from the payment of revenue; and the second, third, and each successive register, at the expiration of every five years.

¹See foot-note 1 on p. 101, *ante*.

²These words were substituted for the words "to Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "through the Board of Revenue, for the information of the Governor General in Council" by the Amending Act, 1903 (1 of 1903).

⁴*i.e.*, the 13th September, 1805.

of 1805.]

(Secs. 24—26.)

'24. All the provisions contained in Regulation XIX, 1793¹, regarding lands exempt from the payment of revenue to Government under grants not being *badshahi* or royal, which are not superseded by the foregoing rules, are hereby declared to be in force in the *zila* of Cuttack.

Regulation
XIX, 1793.
in force
in Cuttack.

25. The following rules containing modifications of the provisions contained in Regulation XXXVII, 1793², respecting lands held exempt from the payment of revenue under *badshahi* or royal grants, shall be in force in the *zila* of Cuttack; and all the provisions of that Regulation which are not superseded and rendered of no effect by the following rules shall be considered to be in force in the said *zila*.

Also
Regulation
XXXVII, 1793.

26. *First*.—The term "*badshahi grant*" shall be construed to extend to all grants made by the supreme power for the time being, and consequently to include grants of the following descriptions:—

"*Badshahi grant*"
defined.

First, royal grants properly so called, secondly, grants made by the *Suba* of Orissa; and thirdly, grants made by the *Rajas* of Birar.

Second.—*Altamgha*, *jagir*, *aima*, *madadmash* or other *badshahi* grants for holding land exempt from the payment of revenue, made previous to the 14th October, 1803, shall be deemed valid provided the grantee actually and *bonâ fide* obtained possession of the land so granted previous to that date, and the grant shall not have been subsequently resumed by the officers or the orders of Government.

Badshahi
grants made
before 14th
October, 1803,
declared
valid.

If it shall be proved to the satisfaction of the Court that the grantee did not obtain possession of the land so granted previous to the 14th October, 1803, or that he did obtain possession of it prior to that date, but that it has been since resumed by the officers or the orders of Government, the grant shall not be deemed valid.

Third.—In the event, however, of a claim being preferred by any person to hold land exempt from the

Procedure in
case of doubt
as to authority
of officers
resuming
grants.

¹So much of s. 24 as authorizes and requires proprietors and farmers of estates and dependent *taluks* (in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to the 1st December, 1790), "of their own authority to collect the rents of such land and to dispossess the grantees of the proprietary right in the land and to re-annex it to the estate or *taluk* in which it may be situate" has been repealed by the Bengal Rent Act, 1859 (X of 1859), s. 28.

²The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

³The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.

(Sec. 26).

payment of revenue under a *badshahi* grant made previous to the 14th October, 1803, and on its being proved to the satisfaction of the Court in which the suit may be instituted in the first instance, or to which it may be appealed, that the grantee held the land exempt from the payment of revenue previous to that date, but that it was subjected to the payment of revenue posterior thereto by an officer of Government, and the Court shall entertain doubts as to the competency of such officer under the powers vested in him to resume the grant and subject the lands to the payment of revenue, the Court shall suspend its judgment, and report the circumstances to the ¹[Provincial Government], to whom a power is reserved of determining whether such officer was or was not competent to resume the grant; and, upon receiving the determination of the ¹[Provincial Government] the Court is to act accordingly.

Rules respecting grants for life only.

Fourth.—But no part of the preceding clauses shall be construed to empower the Courts to adjudge any person, not being the original grantee, entitled to hold land paying revenue to Government exempt from the payment of revenue under a *jagir* or other grant made previous to the 14th October, 1803, where the grant may expressly specify it to have been given for the life of the grantee only; or supposing no such specification to have been made in the grant, or the grant not to be forthcoming, where the grant, from the nature and denomination of it, shall be proved to be a life-tenure only, according to the ancient usages of the country.

Fifth.—Nor to entitle the heirs of any person now holding lands exempt from the payment of public revenue, under a *jagir* or other *badshahi* life-grant made previous to the 14th October, 1803, to succeed to and hold such land exempt from the payment of revenue upon the demise of the present possessor, where the grant may expressly specify it to have been given for the life of the grantee only: or supposing no such specification to have been made in the grant, or the grant not to be forthcoming, where, from the nature and denomination of the grant, it shall be proved to be a life-tenure only, according to the ancient usages of the country.

Present possessors not to transfer or mortgage grants.

Sixth.—The present possessors of lands now exempt from the payment of revenue, under such *jagir* or other life-grants made previous to the 14th October, 1803, and declared by the preceding clause not to be hereditary, are prohibited from selling or otherwise transferring

¹See foot-note 1 on p. 101. *ante*.

of 1805.]

(Secs. 27—30.)

them, or mortgaging the revenue of the lands for a longer period than their own lives; and all such transfers and mortgages which have been or may be made are declared illegal and void.

27. All *badshahi* grants for holding land exempt from the payment of revenue, which may have been made since the 14th October, 1803, by any other authority than that of the British Government, and which may not have been confirmed by Government, or by an officer empowered to confirm them, are declared invalid.

Grants made since 14th October, 1803, and not confirmed, declared invalid.

28. If doubts shall be entertained by any Court as to the competency of the authority of any officer to confirm any such grant, the Court is to suspend its judgment, and report the circumstances of the case to the ¹[Provincial Government,] to whom a power is reserved of determining finally whether the officer possessed competent authority to confirm the grant or otherwise; and the Court, upon receiving the determination of the ¹[Provincial Government,] shall decide accordingly.

Procedure in case of doubt of authority of officer confirming grant.

29. The period of one year, reckoning from the expiration of the *Wilayati* year 1212,² shall be allowed to the proprietors to register their grants. On the expiration of that period of time the Collectors shall prepare the first periodical register of lands held exempt from the payment of revenue under *badshahi* tenures; and the second, third and each successive register at the expiration of every five years.

Periods fixed for registering grants and preparing periodical registers.

30. * * * * *

In cases in which persons may have obtained pensions from the Government of Birar, under grants made previous to the 14th day of October, 1803, such pensions shall be continued to the present incumbents, and will either descend to their heirs and successors, or will revert '[to the Crown] on the decease of the present incumbents, as shall appear to the ¹[Provincial Government,] on a consideration of the tenor of the grant and all the circumstances of the case, to be proper * * * :

Pensions.

¹See foot-note 1 of p. 101, *ante*.

²*i.e.*, the 13th September, 1805.

³Portion of s. 30 which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

⁴These words were substituted for the words "to Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵The words and figures "under section 4, Regulation 24, 1793," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

(Secs. 31—34).

Provided ¹* * that in cases in which persons shall have been in the actual receipt of pensions during a period of three or more years antecedent to the 14th day of October, 1803, under whatever authority, such pensions shall be continued to the present incumbents during their respective lives, but shall revert ²[to the Crown] on the decease of the present incumbents, unless any particular reasons shall appear to the ³[Provincial Government] to exist for continuing the said pensions to their heirs and successors:

Provided also that nothing herein contained shall be construed to authorize the resumption of the established donation for the support of the temple of *Jagannath*, the charitable donation to the officers of certain Hindu temples, called *Anuchatri*, and the allowance granted for the support of the Hindu temple at Cuttack, called *Sitaram Thakur Bari*.

Collections of
sair, etc.,
abolished.

31. The settlement of the land-revenue of the *zila* of Cuttack having been ordered to be made with the exclusion of all *sair*-duties, all duties of that description are hereby abolished in the said *zila*; with the exception of the tax on the sale and consumption of spirituous liquors and intoxicating drugs * * * *.

32. [*Extension of Reg. 36 of 1793 to Cuttack.*]
Rep. by Act XVI of 1864.

Sanads
granted to
certain
samindars
confirmed.

33. The Commissioners having granted *sanads* to certain *samindars*, entitling them to hold their estates at a fixed *jama* in perpetuity, those *sanads* are hereby confirmed. The following is a list of the names of the *samindars* to whom this provision is to be considered applicable:—

Zamindar of Kila Darpan,

Ditto of ditto *Sukinda.*

Ditto of ditto *Madhupur.*

Also *sanad*
granted to
Fateh
Muhammad,
jagirdar of
Malud.

34. The Commissioners having likewise granted a *sanad* to Fateh Muhammad, *jagirdar* of *Malud*, entitling him and his heirs for ever, in consideration of certain services performed towards the British Government, to hold his lands exempt from assessment, such *sanad* is hereby confirmed.

¹The word "likewise," which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

²These words were substituted for the words "to Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³See foot-note 1 on p. 101, *ante*.

⁴The words "and the duties levied from pilgrims at *Jagannath*" are omitted, as having been repealed by Act X of 1840. The rest of the section was repealed by the Amending Act, 1903 (1 of 1903), and is also omitted.

of 1805.]

(Secs. 35—37.)

35. First.—The late Board of Commissioners having concluded a settlement of the land-revenue with certain *zamindars*, whose estates are situated chiefly in the hills and jungles, for the payment of a fixed annual quit-rent in perpetuity, those engagements are hereby confirmed; and no alteration shall, at any time, be made in the amount of the revenue payable under the engagements in question ¹[to the Crown].

Also settlement concluded with certain hill and jungle *zamindars*.

Second.—The following is a list of the *mahals* to which the provision in the preceding clause is applicable:—

*Kila Aull*²

Kila Hamishpore,⁴

Ditto *Kujan*,

Ditto *Marichpur*,

Ditto *Puttra*³

Ditto *Visunpur*,

Third.—The *zamindaris* of *Korda*⁵ and *Kanka*⁶ being *mahals* of the description of those specified in the preceding clause, a settlement shall be concluded, as soon as circumstances may admit, for the revenue of those *mahals* on the principle on which a settlement has been concluded with the *zamindars* of the *mahals* specified in the preceding clause.

Like settlement to be concluded with *zamindars* of *Khurda* and *Kanaka*.

36. All Regulations relating directly or indirectly to the settlement and collection of the public revenue, or to the conduct of the officers employed in the performance of that duty, whether European or Native, in the Province of Bengal, which are not superseded by the foregoing rules, are hereby extended to, and declared to be in force in, the *zila* of *Cuttack*:

Regulations regarding settlement or collection of revenue, etc., in Bengal extended to *Cuttack*.

Provided, however, that nothing herein contained shall be construed to authorize the division of the lands comprised in any estates in the *zila* of *Cuttack*, in which the succession to the entire estate devolves according to established usage to a single heir: in cases of this nature the Courts of Justice are to be guided by the provisions contained in Regulation X, 1880:⁷

Exceptions.

37. [Similar exceptions applicable to the territory of *Mayurbhanj*] Rep. by the Tributary *Mahals* of *Orissa* Act, 1893 (XI of 1893).

¹These words were substituted for the words "to Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²Query Ali.

³Query *Patiya*.

⁴Query *Harisapur*.

⁵Query *Khurda*.

⁶Query *Kanaka*.

⁷The Bengal Inheritance Regulation, 1800.

⁸Portion repealed by the Tributary *Mahals* of *Orissa* Act, 1893 (XI of 1893), is omitted.

Bengal Regulation XIII of 1805.

(The Cuttack Police Regulation, 1805.)¹

(5th September 1805.)

*A Regulation for the maintenance of the peace and for the support and administration of the Police in the zila of Cuttack, * * **

1. Whereas it is essential to the security of the persons and property of the inhabitants of the districts and lands included in the Province of Cuttack and its dependencies that a regular and efficient system of police should be maintained in the said Province: Preamble.

the following rules have been enacted, to be immediately in force in [*the Province of Cuttack including*] the *parganas* of Patáspur, [*Kamardáchor*] and Bhográi.

2. [*The districts and lands comprised in the Province of Cuttack, with the exception of the parganas of Patáspur, Kamardáchor and Bhográi, shall be * * * denominated the zila of Cuttack.*] Zila of Cuttack.

3. The abovementioned *parganas* of Patáspur, [*Kamardáchor*] and Bhográi, shall be included, as at present, in the *zila* of Midnapore; subject, however, to all the laws, and Regulations which have been or may be enacted for the internal government of the *zila* of Cuttack: Certain *parganas* included in *zila* of Midnapore, but subject to Regulations enacted for Cuttack.

Provided, nevertheless, that it shall at any time be lawful for ⁵[the 'Provincial Government, by notification

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903).

LOCAL EXTENT.—This Regulation extends to the *parganas* of Patas-pur and Bhograi [See ss. 1, 3, 4(1), 13], which now form part of the district of Midnapore.

²The words and figure "and for amending certain provisions contained in Regulation IV, 1804," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

³Portion of s. 1 which was repealed by the Amending Act, 1903 (1 of 1903), is omitted.

⁴The words and figure "formed into one *zila*, instead of two *zilas*, as prescribed in Regulation IV, 1804, and shall be," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁵The words "the Governor General in Council, by an Order in Council," in the original text, are to be read as if the words "the Local Government, by notification in the *Calcutta Gazette*," were substituted therefor—see the Amending Act, 1903 (1 of 1903).

⁶The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Secs. 4—7.)

in the ¹[*Official Gazette*,] to make any alteration with respect to the boundaries of the said *zila* [*s*] of Midnapore [*and Cuttack*] which may appear to be expedient.

Rules for appointment of *darogas*.

4. *First*.—The following rules shall be observed in the appointment of *darogas* for the maintenance of the police [*in the zila of Cuttack, and*] in the above-mentioned *Parganas* of Patáspur, [*Kumardachor*] and Bhográi :

Certain *zamindars* to continue to act as police officers in their respective estates.

Second.—In cases in which the *zamindars*, *talukdars* and other landholders have not been formally divested of the charge of the police within the limits of their respective estates, for misconduct or any other reason, either by the late Marátha Government or by the Board of Commissioners for the settlement of the affairs of Cuttack, such *zamindars*, *talukdars* and other landholders shall continue, under the responsibility stated in section 6, Regulation IV, 1804,² in charge of the police, according to established usage, within their respective estates; that is the principal *zamindars*, *talukdars* and other landholders, being proprietors of large estates, shall be constituted *darogas* of police within the limits of their respective possessions; and the inferior *zamindars*, *talukdars* and other landholders, being proprietors of petty estates, shall be considered to be subordinate officers of police, subject to the above-mentioned responsibility, under the immediate authority of *darogas*, who shall be selected and appointed for the maintenance of the police in estates or *mahals* of the latter description.

Third.—[*In what cases khandaits to be nominated to the charge under control of darogas.*] *Rep. by the Amending Act, 1903 (1 of 1903).*

Salaries of *darogas*.

Fourth.—The *darogas* who may be appointed under ³[clause] second ⁴* of this section shall receive such salaries as the ⁵[Provincial Government] may think proper to fix for their support, on a consideration of the labour and responsibility of the offices held by them.

5 to 7. [*Lands assigned by the late Government for the maintenance of the sardars and other paiks to be*

¹The words "*Official Gazette*" were substituted for the words "*Calcutta Gazette*" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²Ben. Reg. IV of 1804 was repealed by the Repealing Act, 1868 (VIII of 1868); but this reference was saved by section 1 of that Act.

³This word was substituted for the word "clauses" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938.)

⁴The words "and third" which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁵See foot-note 6 on p. 111, ante.

of 1805.]

(Secs. 8—13.)

continued to them; Register of the sardar and other paiks; Darogas to fix limits of local authority of the Khandaits, etc.] Rep. by the Amending Act, 1903 (1 of 1903).

8. Nothing contained in this Regulation shall be construed to exempt the zamindars, talukdars, farmers and other holders of land, although they be not formally constituted officers of police, from the duty of affording every assistance in the prevention of breaches of the peace and in the apprehension of public offenders, who are immediately to be delivered into the custody of the nearest officers of police.

Zamindars, etc., not exempted from affording assistance to prevent breaches of peace, etc.

9. Any zamindar, talukdar or holder of land exempt from revenue who may be suspected of conniving at any robbery or other public offence will be liable to be prosecuted before the Criminal Courts of the country, and punished on conviction under the general laws and Regulations of the country.

Liability of zamindars, etc., suspected of conniving at robbery, etc.

10, 11. [*Register of lands assigned for sadar and other paiks; above rules not applicable to dusháds or village-watchmen, entertained by landholders.*] Rep. by the Amending Act, 1903 (1 of 1903).

12. [*Authority of Board of Commissioners in Cuttack discontinued.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

13. All laws and Regulations for the maintenance of the police, and for the administration of justice in criminal cases, in the Province of Bengal, which have been or shall be enacted, and which shall not be inconsistent with or repugnant to the provisions contained in this Regulation, * * * shall have full force and effect [*in the zila of Cuttack and*] in the parganas of Patáspur, [*Kamardachor*] and Bhograi included in the zila of Midnapore.

Extension of Regulations for police and administration of criminal justice to Cuttack.

*The words and figures "and likewise such of the rules contained in Regulation 4, 1804, as are not either specifically or virtually rescinded by the present Regulation," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

*The proviso to s. 13, which was repealed by the Tributary Mahals of Orissa Act, 1893 (XI of 1893), is omitted.

Bengal Regulation XI of 1806.

(The Bengal Troops Transport and Travellers' Assistance Regulation, 1806).¹

(3rd July 1806.)

A Regulation for facilitating the progress of detachments of troops through the Company's territories; for affording any requisite assistance to persons travelling through those territories 2* * *

1. Whereas it is expedient to enact into a Regulation, for general information and observance, the rules which have been established by Government at different times (with such amendments as have been deemed necessary) for facilitating the progress of military detachments through the Company's Provinces, for ascertaining and defraying any necessary expense incurred for that purpose, and for providing compensation when any material damage may be sustained in the cultivation of the country from the march or encampment of troops; Preamble.

and whereas it has also been judged proper to empower the local officers of police to afford such reasonable assistance as may be required by travellers (whether European or Native) proceeding through their respective jurisdictions in procuring the means of prosecuting their journeys;

¹SHORT TITLE.—This short title was given by the Amending Act 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding clause of s. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in the following Scheduled Districts, namely :—

West Jalpaiguri and the Western Duars, in the Jalpaiguri district.

The Western Hills and the Terai, in the Darjeeling district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

REPEAL AS TO *Coolies*.—Such part of this Regulation as authorizes the Collectors and their native officers, or the Magistrates and their police-officers, to give their official aid in procuring *coolies* for the purpose of facilitating the march of troops or the progress of Civil and Military officers or other individuals travelling through the country, either on the public service or on their private affairs, was repealed by Ben. Reg. III of 1820.

²Portions of the title and section 1 which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

(Secs. 2, 3.)

the following rules have been enacted, to be in force throughout the whole of the Provinces subject to the immediate government of the Presidency of Fort William (according as such rules may be applicable to the said Provinces respectively) from the date of their promulgation.

Notice to be given to Collectors and Magistrates, by officers commanding detachments.

2. Whenever a detachment of troops, or a single corps shall be ordered to proceed, by land or by water, through any part of the Company's territories, the commanding officer of such detachment or corps is required to give the earliest practicable notice to the Collectors of the revenue of the *zilas* through which the troops are to pass, of the probable time of their arrival within such districts respectively; together with information of the probable period of their arrival at the particular places where supplies may be required, and a specification of the supplies which will be wanted.

The commanding officer will likewise notify to the Collectors the probable period of the arrival of the troops at the rivers or *nalas* intersecting their march, where boats or temporary bridges may be necessary for crossing the troops and the baggage attached to them. 1* * *

Procedure of Collector on notice.

3. *First*.—On receiving the notification mentioned in the foregoing section the Collector shall immediately issue the necessary orders to the landholders, farmers, *tahsildars* or other persons in charge of the lands through which the troops are to pass, for providing the supplies required, and for making any requisite preparations of boats or temporary bridges, or otherwise for enabling the troops to cross such rivers or *nalas* as may intersect their march, without any impediment or delay.

The Collector shall at the same time depute a creditable Native officer to accompany the troops through his jurisdiction, for the purpose of aiding in procuring the necessary supplies and of facilitating the march of the troops.

It shall also be the duty of such Native officer to provide the troops with whatever bearers, *coolies*², boatmen, carts and bullocks may be indispensably necessary to enable the troops to prosecute their route.

Should he experience any difficulty in the performance of this duty, he is at liberty to apply for assistance

Police to assist on providing bearers, boatmen, carts and bullocks.

¹The words "The Commanding Officer will at the same time communicate to the Magistrates of the *zilas* through which the troops are to pass the probable time of the arrival of the troops within their respective jurisdictions," which were repealed by the Amending Act, 1897 (V of 1897), are omitted.

²This Regulation has been repealed as to *coolies*—see foot-note 1 on p. 115, *ante*.

of 1806.]

(Sec. 4.)

to the nearest police-officer, who is directed to afford his aid in providing the number of persons, and of carts and bullocks required.

Second.—The supplies furnished under the foregoing clause (including earthen pots, firewood and every article of supply) shall be paid for by the persons receiving the same at the current *bazar* prices of the place at which they may be provided;

Rates for supplies furnished to troops.

and all officers commanding detachments of troops or single corps marching through any part of the Company's territories are enjoined to make immediate inquiry into any complaints which may be preferred to them by the persons furnishing such supplies or in their behalf against any person or persons under their command, and to afford such redress to the complainants as the nature of the case may appear to require.

Commanding officers to inquire into, and redress, complaints against persons under their command.

4. *First.*—Whenever a detachment of troops or single corps shall be provided with boats, temporary bridges or other accommodations by any landholder, farmer, *tahsildar* or other person, conformably to the orders of the Collector of the *zila*, for the purpose of crossing the troops and their baggage over rivers or *nalas*, the commanding officer of such detachment or corps will grant a certificate to the person furnishing the same specifying the number of boats and persons employed, the burthen of each boat, and how long employed on the public service.

Certificate to be granted by commanding officer when troops are provided with boats, etc.

In instances in which temporary bridges may be constructed for the above purpose the certificate to be granted by the commanding officer is to specify generally the dimensions of the bridges and the materials of which they may be composed.

Second.—The certificate mentioned in the foregoing clause shall be immediately transmitted to the Collector of the *zila* by the person receiving it, accompanied by a detailed account of the expense incurred for the purposes therein specified.

Certificate to be sent to Collector with account.

The Collector shall without delay communicate the particulars of the account to the officer commanding the detachment or corps on whose account the expense may have been incurred, who shall certify generally thereon whether the services charged for in it were performed, or shall state such exceptions as he may have to offer to any of the charges.

Account to be sent by Collector to commanding officer. Endorsement by commanding officer.

Third.—When the account above-mentioned shall be returned to the Collector he shall certify whether the sums and rates charged in it are in his opinion reasonable and conformable to the usual rates of labour and hire in the *zila*; and shall transmit the account, with

Account and vouchers to be sent by Collector with his report to Central Government.

(Sec. 5.)

the vouchers and certificates relating to it, with any requisite observations thereupon, through the prescribed channel, to the ¹[Central Government].

After the account shall have undergone the examination and report prescribed for all military contingent charges, the ¹[Central Government] will pass such final order as may appear proper.

Collector may pay charge if reasonable.

In the meantime the Collector is empowered in such cases to pay the amount of the charge, or such proportion of it as he may consider reasonable, to the landholder, farmer or other person entitled thereto; inserting the amount so disbursed by him at the foot of his treasury-account, in explanation of his treasury-balance, in the mode prescribed for similar cases.

Procedure for landholders, etc, sustaining injury from march or encampment.

5. *First*.—Whenever a proprietor, farmer, tenant or manager of land through which any detachment or corps of the Company's troops may march, or on which they may be encamped, shall consider himself entitled to compensation for any injury sustained from the march or encampment of the troops, he shall immediately furnish the commanding officer of such troops with as accurate a statement as can be prepared of the nature and extent of the injury sustained; when the commanding officer is required to certify generally thereon whether or not the damage represented to have been sustained has been actually committed, together with his opinion respecting the justice and extent of the claim.

Certificate by commanding officer.

Certificate with statement of claim to be presented to Collector within ten days.

Second.—If the proprietor, farmer, tenant or manager, after receiving such certificate, shall consider himself entitled to compensation, he will be at liberty to present the statement of his claim, with the commanding officer's certificate thereon, to the Collector of the *zila* (either in person or by his *wakil*) within ten days from the date of the certificate; but no claim of this description shall be received by the Collector after the expiration of that period, unless the person preferring it shall assign good and satisfactory reason for the delay.

The Collector, on receiving a statement of damage and the commanding officer's certificate thereon within the prescribed period, or afterwards if sufficient reason be assigned for the delay, shall forthwith adopt such

¹These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1806.]

(Secs. 6, 7.)

measures as may appear requisite to ascertain whether or not the claim be well founded; and shall report his proceedings to the Board of Revenue, accompanied by his opinion on the merits of the claim, for the consideration and orders of ¹[the Central Government].

It is, however, declared that no claim will be received unless accompanied by the prescribed certificate of the commanding officer of the troops by whom the damage may be stated to have been committed; excepting in instances in which the claimant can show good and sufficient cause for not having obtained such certificate.

In such cases, if the Collector shall be satisfied with the cause assigned by the claimant for not having obtained the prescribed certificate, he shall transmit the petition and statement of the claimant to the officer commanding the troops by whom the damage may be stated to have been committed, and shall wait his reply thereto previously to determining whether or not the claim be entitled to investigation.

6. Immediately on receiving the notification mentioned in section 2, the Magistrates shall transmit orders to the several police-*darogas* or other local officers of the police through whose jurisdiction the troops are to pass to afford every assistance in their power to facilitate the march of the troops through their respective jurisdictions; and to co-operate, as far as necessary, with the person deputed on the part of the Collector in procuring the requisite supplies, as well as in adjusting any disputes which may arise respecting the prices of the articles furnished, and in preventing any alarm to the inhabitants of the country.

Procedure by Magistrates on receiving notice mentioned in section 2.

7. Officers commanding detachments of troops or single corps on their march through any part of the Company's territories are already required, by the general orders issued under date the 1st of February, 1788, to report to the Commander-in-Chief in what manner the troops have been supplied in passing through the districts lying in their route.

Report to Commander-in-Chief by officers commanding troops on march.

In like manner, the Collectors are directed to report to the Board of Revenue, ²* * *, any complaints which may be made to them of the misbehaviour of the

¹These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words "and the Magistrates to report to the *Nizam-at-Adalat*, for the information of the Governor General in Council," which were repealed by the Amending Act, 1897 (V of 1897), are omitted.

(Sec. 8.)

troops, when such complaints shall appear to be well founded and of sufficient importance to require communication to ¹[the Central Government].

Police empowered, in cases of necessity, to assist travellers in prosecuting their route.

8. Whenever any military officer, not commanding nor proceeding with a corps or detachment of troops, or any other person (whether European or Native) not restricted by Government from passing through the country, may be proceeding within any part of the Company's Provinces, either on the public service or on his private affairs, and shall be in need of assistance during his route to enable him to prosecute his journey, he shall be at liberty to apply to the nearest local officer of police to aid him in providing any requisite bearers, *coolies*,² boatmen, carts or bullocks, or any necessary supplies of provisions or other articles.

Assistance how afforded.

On receiving an application of the above nature the police-officer to whom it may be made shall furnish the aid required, or cause it to be furnished by the proper person or persons: provided that a sufficient number of persons who have been accustomed to act as bearers, *coolies*² or boatmen, or the requisite number of carts and bullocks, not exclusively appropriated to the purposes of agriculture and occasionally let for hire, can be procured within his jurisdiction.

Persons and carts and bullocks not to be employed in furnishing assistance.

But all police-officers are strictly forbidden, under pain of dismission from office ³* * *, on applications of the above nature, to compel any persons not accustomed to act as bearers, *coolies*² or boatmen, to serve, on such occasions, or to furnish a traveller, or cause him to be furnished, with bullocks or carts kept for private use and not for hire, or exclusively appropriated to the purposes of agriculture.

Person employed to be at liberty to return from first police-station.

Persons so employed, and the persons in charge of carts and bullocks so provided, shall be at liberty to return from the first police-station in the next *zila* through which the corps or detachment is to march, unless a voluntary engagement to the contrary may be entered into by such persons.

Conditions of assistance to travellers.

The police-officers are further enjoined to be careful that a proper compensation for the bearers, *coolies*,² boatmen, carts or bullocks employed, and a just price for the provisions or other articles provided, be secured to the persons entitled thereto.

¹See foot-note 1 on p. 119, *ante*.

²This Regulation has been repealed as to *coolies*—see foot-note⁴ on p. 115, *ante*.

³The words and figures "under the rules prescribed by Regulation 5, 1804," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

of 1806.]

(Secs. 9—20.)

For this purpose the police-officers are authorized to adjust the rate of hire to be paid for the bearers, coolies,¹ boatmen, carts and bullocks required and the price of any articles provided, as well as to demand that the whole or a part, according to the circumstances of the case, be paid in advance.

Should any traveller refuse to comply with the adjustment or demand so made by a police-officer, he will not be entitled to any assistance from the ²[officers of the Crown] under this Regulation.

9. [*Prohibition against persons not in the military service wearing military dress.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

10. [*Trial of military guards by martial law in certain cases.*] Rep. by the Repealing Act, 1876 (XII of 1876).

11, 12. [*Rules for promulgating Regulations.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

13 to 19. [*Rules for supplying military guards or detachments; permanent guards; temporary guards; monthly report of guards, etc., supplied; application of rules; non-applicability in Presidency stations.*] Rep. by the Repealing Act, 1876 (XII of 1876).

20. [*Repeal of cl. (1), s. 22, of Reg. 1 of 1804.*] Rep. by Ben. Reg. II of 1811.

¹This Regulation has been repealed as to coolies—see foot-note¹ on p. 115, *ante*.

²These words were substituted for the words "officers of Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Regulation XIX of 1810.

(The Bengal Charitable Endowments, Public Buildings and Escheats Regulation, 1810.)¹

(14th December 1810.)

*A Regulation for the due appropriation of the rents and produce of lands granted for the support of * * * colleges and other purposes; for the maintenance and repair of * * * public buildings; and for the custody and disposal of nazul property or escheats.*

1. Whereas considerable endowments have been granted in land by the preceding Governments of this country and by individuals for the support of * * * colleges and for other * * * beneficial purposes; and whereas there are grounds to suppose that the produce of such lands is in many instances appropriated, contrary to the intentions of the donors, to the personal use of the individuals in immediate charge and possession of such endowments; and whereas it is an important duty of every Government to provide that all such endowments be applied according to the real intent and will of the grantor; and whereas it is moreover essential to provide for the maintenance and repair of * * * buildings which have been erected either at the expense of

Preamble.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see s. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

PARTIAL REPEALS.—Such parts of Ben. Reg. XIX of 1810 as required that the Board of Revenue should provide, with the sanction of the Government, for the due repair of public edifices of the description of bridges, *sarais* and *kattras*, were repealed by Ben. Reg. XVII of 1816, s. 16.

So much of Ben. Reg. XIX of 1810 as relates to endowments for the support of Mosques, Hindu temples or other religious purposes was repealed by the Religious Endowments Act, 1863 (XX of 1863). See the saving in s. 23 of that Act.

*The words "Mosques, Hindu temples," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

*The words "bridges, *sarais*, *kattras* and other," were repealed, *ibid*.

*The words "pious and", were repealed, *ibid*.

(Secs. 2—4.)

Government or of individuals for the use and convenience of the public, and also to establish proper rules for the custody and disposal of *nazul* property or escheats, the following rules have been enacted, to be in force, from the period of their promulgation, throughout the Provinces immediately dependent on the Presidency of Fort William.

Superintendence of lands granted for support of colleges, &c.

2. The general superintendence of all lands granted for the support of " * colleges and for other " * beneficial purposes, and of all public buildings, such as bridges, *sarais*, *kattras* and other edifices, is hereby vested in the Board of Revenue " * * * *

Appropriation of endowments.

3. It shall be the duty of the Board of Revenue " * * * to take care that all endowments made for the maintenance of establishments of the above description be duly appropriated to the purpose for which they were destined by the Government or individual by whom such endowments were granted.

In like manner it shall be the duty of "[the Board of Revenue] to provide, with the sanction "[of the Provincial Government], for the due repair and maintenance of all public edifices which have been erected, either at the expense of the former or present Government or of individuals, and which either at present are or can conveniently be rendered conducive to the convenience of the community⁷.

Disposal of ruined buildings.

4. In those cases, however, in which any of the buildings in question have fallen to decay, and cannot, from that or other causes, be conveniently repaired, or are not calculated if repaired to afford any material accommodation to the public, the "[Board] shall recommend that they be sold on the public account, or otherwise disposed of, as may appear most expedient.

¹The words "Mosques, Hindu temples," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²The words "pious and", were repealed, *ibid*.

³The words "and Board of Commissioners in the several districts subject to the control of those Boards respectively," were repealed, *ibid*.

⁴The words "and Board of Commissioners," were repealed, *ibid*.

⁵These words were substituted for the words "those Boards", *ibid*.

⁶These words were substituted for the words "of Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁷This paragraph was repealed as to public edifices of the description of bridges, *sarais* and *kattras*, by Ben. Reg. XVII of 1816, s. 16.

⁸This word was substituted for the word "Boards" by the Amending Act, 1903 (I of 1903).

of 1810.]

(Secs. 5—9.)

5. Under the foregoing rules it will of course be incumbent on the Board of Revenue ¹* * * to prevent any lands which have been granted for the support of establishments of the above description from being converted to the private use of individuals, or appropriated in any other mode contrary to the intent and will of the donor; and likewise to prevent all public edifices from being usurped by individuals and falling into the possession and exclusive use of private persons.

Lands or public edifices not to be appropriated by individuals for private uses.

6. Whenever the Board of Revenue ¹* * * may be of opinion that any of the above-mentioned edifices require repair, they shall obtain the necessary estimates of the expense required for the execution of the work, and forward them ²[to the Provincial Government] for its approval.

Estimates of necessary repairs to be submitted to Provincial Government.

7. The general superintendence of all *nazul* property or escheats is likewise hereby vested in the Board of Revenue ³* * * who will inform themselves fully through the channel hereafter mentioned of all property of that description, and ⁴[direct whether it should] be sold on the public account, or in what other mode it should be disposed of.

Superintendence of *nazul* property.

8. To enable the Board of Revenue ¹* * * the better to carry into effect the duties intrusted to them by this Regulation, local agents shall be appointed in each *zila* subject to the authority, control and orders of ²[the Board].

Appointment of local agents.

9. The Collector of the *zila* shall be *ex-officio* one of those agents, with whom the ³[Provincial Government] will unite such other public officers, whether in the civil, military or medical branch of the service, as may from time to time be judged expedient.

Collector to be *ex-officio* agent with others.

¹The words "and Board of Commissioners", which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²These words were substituted for the words "to Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words "and Board of Commissioners respectively," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁴These words were substituted for the words "report to Government whether it should in their opinion" by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

⁵These words were substituted for the words "those Boards respectively" by the Amending Act, 1903 (I of 1903).

⁶These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Secs. 10—13.)

Agents to ascertain and report particulars of endowments, etc. ;

10. Under the provisions of the present Regulation it will of course be the duty of the agents to obtain full information from the public records, and by personal inquiries, respecting all endowments, establishments and buildings of the nature of those above described, and of all *nazûl* property or escheats, and to report to the Board * * * any instances in which they may have reason to believe that the lands or buildings are improperly appropriated; being in all cases careful not to infringe any private rights, or to occasion unnecessary trouble or vexation to individuals.

also names, etc., of present trustees or managers ;

11. The said agents will further ascertain and report the names, together with other particulars, of the present trustees, managers or superintendents of the several institutions, foundations or establishments above described, whether under the designation of *matâwali* or any other, and by whom and under what authority appointed or elected, and whether in conformity to the special provisions of the original endowment and appropriation by the founder, or under any general rule or maxim applicable to such institutions and foundations.

and all vacancies or casualties, with full information as to pretensions of claimants ;

12. The local agents will also report to the ¹[Board of Revenue] all vacancies and casualties which may occur, with full information of all circumstances, to enable the ²[Board] to judge of the pretensions of the person or persons claiming the trust; particularly whether the succession have been heretofore by inheritance in the line of descent, or whether the successor have been in former instances elected, and by whom, or whether he has been nominated by the founder or his heir or representative, or by any other individual patron of the foundation, or by any officer or representative of Government, or directly by the Government itself.

to recommend fit persons in cases where nomination rests in Government.

13. In those cases in which the nomination has usually rested with the present or former Government, or with a public officer, or of right appertains ⁴[to the Provincial Government], in consequence of no private person being competent and entitled to make sufficient provision for the succession to the trust and management, it will be the further duty of the local agents to

¹The words "to whose authority those agents are respectively subjects," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²These words were substituted for the words "superior Boards," *ibid.*

³This word was substituted for the word "Boards", *ibid.*

⁴These words were substituted for the words "to Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1810.]

(Secs. 14—16.)

propose, for the approval and confirmation of the '[Board of Revenue], a fit person or persons for the charge of trustee or manager and superintendent, duly attending to the qualifications of the person selected, and to any special provisions of the original endowment and foundation, and to the general rules or the known usages of the country applicable to such cases.

14. On the receipt of the report and information required by the preceding clause, the Board of Revenue * * * will either appoint the person or persons nominated for their approval, or will make such other provision for the trust, superintendence and management as may be right and fit with reference to the nature and conditions of the endowment having previously called for any requisite further information from the local agents.

Board to appoint such persons, or make other provision for trust.

15. Nothing contained in this Regulation shall be construed to preclude any individual who may conceive that he has just grounds of complaint on account of any orders which may be passed by any of the above-mentioned authorities, with respect to the appropriation of any lands or buildings of the nature of those above described, from suing * * * for the recovery thereof in the regular course of law, or for compensation in damages for any loss or injury supposed to have been unduly sustained by him.

Saving of private rights.

16. It is to be clearly understood that the object of the present Regulation is solely to provide for the due appropriation of lands granted for public purposes agreeably to the intent of the grantor, and not to resume any part of the produce of them for the benefit of Government.

Object of Regulation.

In like manner it is fully intended that all buildings erected by the former or present Government or by individuals for the convenience of the public should be exclusively appropriated to that purpose, with the exception of such as have fallen to decay and cannot from that or any other cause be conveniently repaired, or which, under existing circumstances, can no longer contribute to the accommodation of the community.

¹These words were substituted for the words "superior Board" by the Amending Act, 1903 (I of 1903).

²The words "or Board of Commissioners," were repealed, *ibid*.

³The words "in the mode and form prescribed by the Regulation, where Government or public officers are parties; or under the general provisions of the Regulations, if the suit be brought against a competitor or other private person," were repealed, *ibid*.

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and Escheats Regulation, 1810.*

[Ben. Reg. XIX of 1810.]

(Sec. 16A.)

Functions of the
Board of
Revenue to be
discharged by
the
Commissioner
of Wakfs in
Bengal.

¹16A. Notwithstanding anything contained in this Regulation the functions of the Board of Revenue under this Regulation shall be discharged in respect of any wakf property in Bengal by the Commissioner of Wakfs appointed under the Bengal Wakf Act, 1934:

Ben. Act
XIII of
1934.

Provided that the powers under section 14 of this Regulation shall be exercised by the Board of Wakfs constituted under the said Act.

¹Section 16A was inserted by s. 76 of the Bengal Wakf Act, 1934 (Ben. Act XIII of 1934).

Bengal Regulation V of 1812.

(The Bengal Land-Revenue Sales Regulation, 1812.)¹

(1st May 1812.)

A Regulation for amending some of the rules at present in force for the collection of the Land-revenue.

1. [Preamble and local extent.] Rep. by the Repealing Act, 1874 (XVI of 1874).

Proprietors competent to grant leases for any term.

2. * * * Proprietors of lands are declared competent to grant leases for any period which they may deem most convenient to themselves and tenants and most conducive to the improvement of their estates.

Proprietors competent to grant leases and receive engagements in any convenient form.

3. * * * The proprietors of land shall henceforward be considered competent to grant leases to their dependent *talukdars*, under-farmers and *rai-yats*, and to receive correspondent engagements for the payment of rent from each of those classes, or any other classes of tenants, according to such form as the contracting parties may deem most convenient and most conducive to their respective interests:

Prohibition of arbitrary

Provided, however, that nothing herein contained shall be construed to sanction or legalize the imposition of arbitrary or indefinite cesses, whether under the denomination of *abwab*, *mathat* or any other denomination.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

The Regulation has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in the following Scheduled Districts, namely :—

West Jalpaiguri in the Jalpaiguri district, the Western Hills, the Tarai and the Dumson subdivision, in the Darjeeling district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

²Repealing clauses in ss. 2 and 3, which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

(Secs. 4—24.)

All stipulations or reservations of that nature shall be adjudged by the Courts of Judicature to be null and void: but the Courts shall notwithstanding maintain and give effect to the definite clauses of the engagements contracted between the parties, or, in other words, enforce payment of such sums as may have been specifically agreed upon between them.

No attacher of lands on part of Provincial Government or purchaser at public sales, entitled to annul existing leases within year.

4. * * * * * Neither any person deputed to attach lands on the part of ²[the Provincial Government], nor purchasers at the public sales, shall be deemed entitled to annul existing leases within the year in which the attachment or sale may have taken place, on the ground that such leases were evidently collusive, without a decision to that effect in a Court of Judicature

5 to 23. [*Rules as to rates at which purchasers of land may collect during year in which sale took place; rules to apply to sequestrators, etc., holding under authority of Boards of Revenue or Commissioners; modifications of existing rules for recovery of arrears.*] Rep. by the Bengal Rent Act, 1859 (X of 1859).

Sales of entire estates not liable to be annulled on ground of some sharers not having obtained possession.

24. It is hereby declared that sales made of entire estates for the recovery of arrears of public assessment are not liable to be annulled by the Courts of Judicature on the ground that one or more of the sharers may not have obtained possession of his or their interests in the property.

The consideration of and decision on the expediency of selling the entire estate, or of disposing in the first instance of any particular part of it, is hereby declared to reside in the Board of Revenue ¹subject to the control exercised by the ²[Provincial Government], in its executive capacity, in matters connected with the public revenue.

¹Portion of s. 4 which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

²These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words and figures "the case to be tried as a summary suit under Regulation VII, 1799," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴The words "and Board of Commissioners, respectively," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

of 1812.]

(Secs. 25—28.)

25. No means existing by which any certain or accurate computation can be formed *à priori* of the real value of any estate, or portion of estate, which may be exposed to sale for the recovery of arrears of public assessment, or of the adequacy of the price which may be offered for such estate, or portion of estate; it is hereby declared that sales made at public auction for that purpose are not liable to be annulled by the Courts of Judicature on the ground that the proceeds of the sales have materially exceeded the amount of the arrears due from the proprietor of the lands ¹[to the Crown].

Not on ground of proceeds having materially exceeded arrears due.

The Board of Revenue * * * will be guided in cases of that nature by their own discretion; subject, of course, to any instructions with which they may at any time be furnished by the ³[Provincial Government].

26. Inconvenience to the public and injury to private rights having been experienced in certain cases from disputes subsisting among the proprietors of joint-undivided estates it is hereby enacted that whenever sufficient cause shall be shown by the Revenue Authorities, or by any of the individuals holding an interest in such estates, for the interposition of the Courts of Judicature, it shall be competent to the *Zila* * * * Judges to appoint a person, duly qualified and under proper security, to manage the estate; that is, to collect the rents and discharge the public revenue, and provide for the cultivation and future improvement of the estate

Appointment by Judges of managers of joint-undivided estates.

27. In like manner, should the Authorities aforesaid, or any individual holding an interest in the estate, be at any subsequent time dissatisfied with the conduct of the manager, it shall be competent for them or him to represent the circumstances of the case to the *Zila* * * * Judge, and to move the Court for the removal of the said manager * * *.

Court may be moved for removal of managers.

28. [Penalty and interest on arrears.] *Rep. in part by Ben. Reg. XII of 1824. Residue rep. by Ben. Reg. VII of 1830.*

¹These words were substituted for the words "to Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words "and Board of Commissioners", which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

³These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The words "and City," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁵Portion of s. 26 which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

⁶The words "or City," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁷Words repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

Bengal Regulation XI of 1812.

(The Bengal Foreign Immigrants Regulation, 1812.)¹

(18th July 1812.)

A Regulation to empower the ²[Central Government] to order the removal of emigrants from foreign countries, and their descendants, from any place in the vicinity of the frontier of the State from which they may have emigrated; and, in certain cases, to place and detain any such persons in safe custody; and likewise to provide for the trial of emigrants and their descendants who may excite disturbances in the countries from which they may have emigrated, and of persons aiding them in the prosecution of such attempts.

1. Whereas considerable bodies of persons, being Natives of Arakan and ordinarily denominated Mughs, have from time to time emigrated from that country and established themselves in that part of the district of Chittagong which lies contiguous to the Arakan frontier; Preamble.

And whereas numbers of those persons, or of their descendants, abusing the protection which had been afforded to them in the British territories, have excited disturbances and even levied war in the country of Arakan against the Government of Ava³, of which State

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of section 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in the following Scheduled Districts, namely:—

West Jalpaiguri, in the Jalpaiguri district; and the Dumson subdivision, in the Darjeeling district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4 (2).

²These words were substituted for the words "Local Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The Government of Ava has ceased to exist, its territories having been annexed to the British Dominions. The territories are now known as "Upper Burma."

(Secs. 2.)

Arakan is now a dependency, and have conducted themselves in a manner manifestly tending to disturb the relations of amity which subsist between ¹[His Majesty] and the Government of Ava²;

And whereas it is, in consequence, necessary that the ³[Central Government] should possess legal powers to remove the said bodies of emigrants and their descendants from the frontier of the territory of Arakan, or any other bodies of aliens, or their descendants, from the vicinity of the country from which they may have emigrated, and likewise to detain in confinement any of those persons, or any other individuals being Natives of foreign countries, or their descendants, for offences of the above nature actually committed by them in the territories of the State from which they may have emigrated;

And whereas it is necessary to make provision for the trial of persons committing, or aiding in the commission of, the said offences, the following rules have been passed, to be in force from the period of their promulgation throughout the territories immediately dependent on the Presidency of Fort William.

Power to
order removal
of emigrants
to parts of
country deemed
convenient.

2. Whenever the ³[Central Government], upon due investigation, shall be satisfied that the emigrants from Arakan, or emigrants from any other State, who may have sought an asylum in the British territories, or the descendants of any of the said emigrants, shall have abused the protection afforded to them, by attempts to excite disturbances in the State from which they or their ancestors may have emigrated, it shall be competent to the ³[Central Government] to order the removal of those persons to such other part or parts of the country as may be judged most convenient for their future residence.

In like manner it shall be competent to the ³[Central Government] to order such removal whenever ⁴[it] may have grounds to be satisfied that the residence of any body of aliens, or their descendants, in the vicinity of the frontier of the country from which they or their ancestors may have emigrated, is likely to cause any.

¹These words were substituted for the words "the British Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²see foot-note 3 on p. 133, *ante*.

³These words were substituted for the words "Local Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴This word was substituted for the word "he" by the Burma Laws Act, 1898 (XIII of 1898), s. 16.

of 1812.]

(Secs. 3—5.)

seirous misunderstanding between that State and ¹[His Majesty].

3. Whenever any body of emigrants, or any individuals belonging to such body, shall be ordered to be removed from the part of the country in which they may have been established, they shall be allowed to dispose of any property which they may have acquired in such manner as they may judge proper:

Emigrants allowed to dispose of property.

Provided, however, that if they shall nevertheless retain the right to any real property at the period of their actual removal, it shall be competent to the ²[Central Government] to order such property to be sold by public auction under the superintendence of the Collector of the district.

In that case the nett proceeds of the sale shall be duly paid to the person or persons to whom the said property belonged.

4. In cases in which the ²[Central Government] may, on due inquiry and mature deliberation, be satisfied that either the preservation of the tranquillity of the British territories, or of the dominions of the allies of ¹[His Majesty], or the maintenance of the relations of amity subsisting between ¹[His Majesty] and other States, requires that any of the leaders or other persons of the above description, who may have committed the offences mentioned in section 2 of this Regulation, should be placed and detained under restraint, it shall be competent to the ²[Central Government] to order any such persons having committed any of the said offences, but not otherwise, to be apprehended and committed to confinement at such place, and under the custody of such public officer, and detained in confinement for such time, as may be deemed by the ²[Central Government] necessary for the public good.

Power to order leaders or other emigrants to be apprehended and kept under restraint.

5. *First.*—Any persons of the above description, or their descendants, who, while living under the protection of ¹[His Majesty], shall enter the country from which they or their ancestors may have emigrated, or any other foreign country, and shall excite, or attempt to excite, disturbances in the said countries, shall be

Punishment for emigrants or their descendants exciting disturbances in countries from which they emigrated.

¹These words were substituted for the words "the British Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "Local Government", *ibid.*

[Ben. Reg. XI of 1812.]

(Sec. 5.)

liable to be brought to trial for that offence ^{1*} * * and, if convicted, shall be sentenced to suffer imprisonment for the period of seven years.

Punishment
of persons
aiding or
assisting in
attempts to
excite such
disturbances.

Second.—Any persons, whether Native British subjects or aliens, who shall furnish emigrants from foreign countries with any assistance, either of men, money or arms, in prosecution of their attempts to excite disturbances in the country from which they may have emigrated, or in any other country, or shall otherwise aid such aliens in the prosecution of their criminal design, shall be liable to be brought to trial for that offence ^{1*} * * and, if convicted, shall be sentenced to suffer imprisonment for the term of seven years:

Proviso.

Provided, however, that, if the Judge ^{2*} * * by whom the case may be tried shall be of opinion that the punishment established by this and the preceding clause should in any instance be mitigated, he shall submit the proceedings held on the trial ³[to the ‘Central Government, and the ‘Central Government shall pass such orders thereon as it may think fit]:

Provided, moreover, that no sentence or order which may be passed on the trial of any persons under the provisions of the present Regulation shall be competent, or shall be construed, to preclude the ⁴[Central Government] from the exercise of the power vested in the Government by section 4 of ⁵[this Regulation].

¹The words “before the Court of Circuit,” in clauses *First* and *Second* of s. 5, which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words “of Circuit,” were repealed, *ibid.*

³These words were substituted for the words “to the *Nizamat Adalat*, who will recommend to the Governor General in Council such alleviation of the prescribed punishment as they may judge proper” by the Amending Act, 1897 (V of 1897).

⁴The words “Central Government” were substituted for the words “Local Government” by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were substituted for the words “the said Regulation” by the Amending Act, 1903 (I of 1903).

Bengal Regulation XVIII of 1812.

(The Bengal Leases and Land-revenue Regulation, 1812.)¹

(19th September 1812.)

A Regulation for explaining section 2, Regulation V, 1812,² [and rescinding sections 3 and 4, Regulation XLIV, 1793, and sections 3 and 4, Regulation L, 1795,]³ and enacting other rules in lieu thereof.

1. Whereas it has been deemed expedient to remove doubts which have arisen on the construction of section 2, Regulation V, 1812,² [*and to rescind sections 3 and 4 of Regulation XLIV, 1793, and sections 3 and 4 of Regulation L, 1795,*]³ the following rules have been enacted, to be in force from the promulgation of them in the Provinces of Bengal, [*Bihar, Orissa (exclusive of the district of Cuttack)*] and the *parganas* formerly dependent on that district but now annexed to the *zila* of Midnapore * * *.

Preamble.

2. Doubts having arisen on the construction of section 2, Regulation V, 1812,² it is hereby explained that the true intent of the said section was to declare proprietors of land competent to grant leases for any period, even to perpetuity, and at any rent which they might deem conducive to their interests:

Explanation of section 2, Regulation V, 1812, as to granting leases in perpetuity or otherwise.

Provided, however, that nothing contained in the former or present Regulation shall be construed to empower persons holding a restricted interest in estates, whether for life or for other limited period, or subject to control or restriction in the use or disposal of the property, to grant leases extending beyond the term of their own interest in the property, or exceeding their power or authority over it.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal, with certain exceptions (*see* section 1). It has, however, been repealed by the Bengal Tenancy Act, 1885 (VIII of 1885), s. 2 (1), in the whole of Bengal except “the town of Calcutta, the Division of Orissa and the Scheduled Districts.”

The extension of the repeal to Scheduled Districts depends upon the terms of notifications extending the Act of 1885 to such districts. Under the terms of the notification extending the Act of 1885 to the Jalpaiguri district, the repeal has taken effect in that district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4 (2).

²The Bengal Land-revenue Sales Regulation, 1812.

³The portions of the title and section 1 which are printed in italics within square brackets are now obsolete. Ben. Regs. XLIV of 1793 and L of 1795 were finally repealed by Act XXIX of 1871.

⁴The words “and Benares,” which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

[Ben. Reg. XVIII of 1812.]

(Sec. 3.)

3. *First.*—[*Repeal of ss. 3 and 4 of Regs. XLIV of 1793 and L of 1795.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

Rule for
apportioning
assessment on
shares of estates
when divided.

Second.—When a division of a joint estate shall be made on the application of the proprietors, or pursuant to the decree of a Court of Justice, the fixed public revenue assessed upon the whole estate shall be apportioned on the several shares agreeably to the principles prescribed in section 10, Regulation I, 1793,¹ * * * without regard to any engagements that may subsist between the proprietors and their dependent *talukdárs* (excepting the dependent *talukdárs* described in section 7, Regulation XLIV, 1793²), under-farmers or *rai-yats*.

But all leases made in conformity to sections 2 and 3, Regulation V, 1812,⁴ and section 2 of this Regulation shall remain in full force, notwithstanding the division of a joint estate among the sharers, or the sale of the whole or a portion of any estate in satisfaction of a decree of Court, or the devolving of the same by inheritance, or the private transfer thereof by sale, gift or otherwise.

¹The Bengal Permanent Settlement Regulation, 1793.

²The words and figures “and section 7, Regulation XXVII, 1795,” which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³Ben. Reg. XLIV of 1793 was repealed by Act XXIX of 1871, but the reference in the text is saved by section 1 of that Act.

⁴The Bengal Land-revenue Sales Regulation, 1812.

Bengal Regulation XXIX of 1814.

(The Bengal Ghatwali Lands Regulation, 1814.)¹

(3rd December 1814.)

A Regulation for the settlement of certain mahals in the district of Birbhum, usually denominated the Ghatwali mahals.

1. Whereas the lands held by the class of persons denominated *ghatwals*, in the district of Birbhum, form a peculiar tenure to which the provisions of the existing Regulations are not expressly applicable;

And whereas every ground exists to believe that, according to the former usages and constitution of the country, this class of persons are entitled to hold their lands, generation after generation, in perpetuity, subject nevertheless to the payment of a fixed and established rent to the *zamindar* of Birbhum and to the performance of certain duties for the maintenance of the public peace and support of the police;

And whereas the rents payable by those tenants have been recently adjusted, after a full and minute inquiry made by the proper officers in the Revenue Department;

And whereas it is essential to give stability to the arrangements now established among the *ghatwals*, the following rules have been adopted, to be in force from the period of their promulgation in the district of Birbhum:

2. A settlement having lately been made on the part of the Government with the *ghatwals* in the district of Birbhum, it is hereby declared that they and their descendants in perpetuity shall be maintained in possession of the lands so long as they shall respectively pay the revenue at present assessed upon them, and that they shall not be liable to any enhancement of rent so long as they shall punctually discharge the same and fulfil the other obligations of their tenure.

Ghatwals in Birbhum, and their descendants in perpetuity, to be maintained in possession of lands, and not liable to enhancement of rent.

3. The *ghatwali* lands shall be considered, as at present, to form a part of the *zamindari* of Birbhum; but the rents of *ghatwals* shall be paid direct to the

Ghatwali lands to form part of zamindari of Birbhum. Rents how paid.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was passed only for the district of Birbhum—see the title and ss. 1 and 2.

[Ben. Reg. XXIX of 1814.]

(Secs. 4, 5.)

Assistant Collector stationed at Suri, or to such other public officer as the Board of Revenue ¹* * * may direct to receive the rents.

Amount payable
to *zamindar* of
Birbhum.

4. The difference between the amount of the revenue assessed on the *ghatwals* and the fixed assessment of revenue in this portion of the *zamindari* of Birbhum payable to Government shall be paid to the *zamindar* of Birbhum and his heirs and successors, in perpetuity.

Disposal of
tenure of
ghatwals failing
to discharge
rents.

5. Should any of the *ghatwals* at any time fail to discharge their stipulated rents, it shall be competent for the ²[Provincial Government]

to cause the *ghatwali* tenure of such defaulter to be sold by public sale in satisfaction of the arrears due from him, in like manner, and under the same rules, as lands held immediately of Government, or to make over the tenure of such defaulter to any person whom the ²[Provincial Government] may approve on the condition of making good the arrear due; or

to transfer it by grants assessed with the same revenue, or with an increased or reduced assessment, as to the Government may appear meet; or

to dispose of it in such other form and manner as shall be judged by the ²[Provincial Government] proper.

Should any increase of revenue be obtained from the operation of any arrangements of the nature above described, such increase shall be paid in conformity to the tenor of the preceding article to the *zamindar* of Birbhum, his heirs and successors.

¹The words "with the sanction of the Governor General in Council," which were repealed by the Amending-Act, 1903 (1 of 1903), are omitted.

²These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Regulation V of 1816.

(The Bengal Kanungos Regulation, 1816.)¹

(16th February 1816.)

A Regulation for establishing the Office of Kanungo in the district of Cuttack, the pargana of Pataspur, and the several parganas dependent on it.

1. Whereas the establishment of the office of *kánungo in the district of Cuttack, the pargana of Pataspur and its dependencies*² may be expected to be of great public benefit in removing the obstacles which have hitherto impeded the revision of the settlement of the *district and parganas abovementioned*,² and in otherwise facilitating the collection of the public revenue and the administration of justice; the following rules have been enacted * * * *.

Preamble.

2. One or two persons shall be appointed to fill the office of *kánungo in every pargana of the district of Cuttack, in the pargana of Pataspur, and in the several parganas dependent on it*,² unless the small extent of a pargana shall render it advisable to place more than one pargana under the same *kánungo*.

Appointment of *kánungos*.

3. [*Nomination and removal.*] Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

4. The office of *kánungo* is declared not to be hereditary; but, in all *parganas* in which persons may be found who formerly discharged the duties of *kánungo*, the officers to be appointed under this Regulation shall, as far as practicable, be selected from them; and in applying future vacancies the Collectors⁴ [or

Office of *kánungo* not hereditary.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903, (1 of 1903).

LOCAL EXTENT.—This Regulation was extended generally to the former Province of Bengal by the Bengal *Kánungos and Patwáris Regulation*, 1819 (1 of 1819), s. 4 (1).

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4(2).

²The words printed in italics are obsolete, this Regulation having been extended to the whole of the former Province of Bengal by the Bengal *Kánungos and Patwáris Regulation*, 1819 (1 of 1819), s. 4(1).

³The commencement clause, which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

⁴These words were inserted by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Secs. 5—7.)

other persons responsible for making the appointments] shall make it a rule, in all practicable cases, to select from the families of the *kánungos* such persons as from character, education and acquirements shall be best qualified to perform the duty.

Salaries of
kánungos.

5. The *kánungos* appointed under this Regulation shall receive such salaries as the ¹[Provincial Government] may think proper to fix for their support.

The salaries so granted shall be considered to preclude all claims to further pecuniary allowances, under the denomination of *nánkár*, or any other denomination.

Revenue of
lands held by
kánungos
liable to
resumption.

It is also hereby declared that the revenue of all lands, the grant of which may be found to have been obtained by any person in virtue of his discharging the duties of *kánungos*, will be liable to resumption ²[by the Crown]; and that this rule shall be considered applicable both to the persons who may be appointed to the office of *kánungo* under the present Regulation, and to those who may not be employed in the public service.

Nothing, however, contained in this provision shall be construed to preclude the ¹[Provincial Government] from continuing to either of those classes of persons the whole or a part of the lands held by them respectively free of assessment, in those cases in which the circumstances of the parties may appear to require that indulgence.

Exception.

6. The above rule is not to preclude claims to rent-free lands, or pensions held by the *kánungos* under grants made to the individuals for reasons unconnected with the office of *kánungo*.

Duties of
kanungos.

7. The *kánungos* are to execute the duties herein specified—

First.—To keep a counterpart *jama-wásil-báki*, or account of the collections made by the *tahsildars* or by *sazáwals* from lands held *khás* or under attachment.

Second.—To keep an account of all lands held under rent-free tenures, whether the grants be hereditary or otherwise, and to report to the Collector all escheats of such lands to ³[the Crown].

Third.—To keep a list of the *patwáris* in each village, and a register of *pattas* granted by the landholders to their under-tenants.

¹These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "by Government" by Sch. XIV, *ibid*.

³These words were substituted for the word "Government", *ibid*.

of 1816.]

(Secs. 8—11.)

Fourth.—To keep a register of all transfers of estates by sale (public or private), mortgage, lease or otherwise, and to attest such transfers at the request of the parties, without fee or gratuity, with their official signatures.

Fifth.—To compile information regarding local boundaries of *parganas* and estates; the number and names of villages, articles of produce, rates of rent, rules and customs established in each *pargana*; and to furnish at the requisition of the Courts of Justice and of the Collectors, all local information within their cognizance.

Sixth.—To assist at all admeasurements of land, whether undertaken by the officers of ¹[the Crown] in conformity to the Regulations, or by the landholders or *raiyats*, and to record the same.

Seventh.—To prepare and keep the information and accounts directed in this or any future Regulation, in such manner and form as may be from time to time prescribed by the Board of Revenue.

Eighth.—To report to the Collector the death of a *mālguzār* and the name of his heirs, and to keep a register of all successions to lands.

8. Persons who may be selected to fill the office of *kánungo* are hereby prohibited from holding farms, or from becoming sureties for farmers or *zamindars*, within the local limits of their official duties.

Kánungos not to hold farms or become sureties.

9. On the death, resignation or removal of a *kánungo* the records of the office are to be made over to his successor, and the Magistrate of the *zila* is enjoined, on the application of the Collector, to interpose his authority, in all cases in which it may be necessary to enforce the surrender of such records.

Transfer of records to successors.

10. The refusal or manifest evasion of any person in possession of the records mentioned in the preceding section to deliver them up on the requisition of the Magistrate is hereby declared to subject the party so offending, on proof thereof, to the penalties prescribed
* * * for resistance to the process of the Magistrate.

Punishment on refusal to give them up.

11. Nothing contained in this Regulation shall be construed to preclude the ²[Provincial Government] from exercising the right of decreasing the number of *kánungos*; of abolishing the office in any *pargana* where from local circumstances the duty may be performed by

Right of Government to vary number of kánungos.

¹See foot-note ² on p. 142, *ante*.

²The words "by the Regulations," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

³See foot-note ¹ on p. 142, *ante*.

[Ben. Reg. V of 1816.]

(Sec. 12.)

less than two persons or by the *kánungos* in a neighbouring *pargana*; nor from exercising the right to increase the number of *kánungos* in any *pargana* where from circumstances more than two may be found necessary.

Collectors to
report when
variations are

12. The Collectors of *Cuttack and Hijli*¹ are enjoined to report to ²[the Provincial Government], through the usual channel, all instances wherein they may deem it expedient to increase or diminish the number of kanungos in a *pargana*, with their reasons at large for such opinion.

¹The words printed in italics are obsolete, this Regulation having been extended to the whole of the former Province of Bengal by the Bengal Kánungos and Patwáris Regulation, 1819 (1 of 1819), s. 4(1).

²These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Regulation XII of 1817.

(The Bengal Patwaris Regulation, 1817.)

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10. Rules as to *patwaris* in *khas* estates.
11. Penalty in cases of refusal or omission to comply with rules.
12. Procedure of *zamindars* wishing to remove *patwari*.
13. Penalties for removing *patwari* without authority.
14. *Patwaris* removable on representation of under-tenants.
15. Procedure of Collector desiring to remove *patwaris*.
16. Duties of *patwaris*.
17. Transmitting and recording *patwaris*' accounts.
18. Payment of *patwaris*, and adjustment of their allowances in certain cases.
19. Remuneration of *patwaris* in villages where none are now appointed.
20. Procedure on refusal of payment of established remuneration to *patwaris*.
21. Local usage of *parganas* to be reported by *pargana kánungo*.
22. Power to summon *patwari* and to examine him on oath to the truth of his accounts.
23. Power to compel *patwaris* to produce their accounts.
24. *Patwaris* to produce accounts when required by Courts of Justice.
25. Power to require attendance of *patwaris* on officers deputed to examine village-accounts and to grant commission to swear *patwaris*.
26. (*Repealed.*)
27. Punishment of *patwaris* falsifying or mutilating village-accounts.
28. (*Repealed.*)
29. Power to require attendance of Native agents of proprietors whose estates are to be sold, transferred or divided, and to cause them to be examined on oath touching accounts.
30. Section 27 applied to Native agents.
31. Procedure in cases not provided for when attendance of proprietors or farmers with accounts is required.
32. Notice to person required to attend.
Penalty for omission or refusal.
33. Provision in cases where appointment of village *patwari* is inexpedient.
34. In what cases Courts prohibited from taking cognizance of complaints of *patwaris*.
35. Appeal to Commissioner from decision or order under section 20.
36. Recovery and appropriation of fines, etc.

Bengal Regulation XII of 1817.

(The Bengal Patwaris Regulation, 1817).¹

(12th August 1817.)

A Regulation for securing the better administration of the office of Patwari * * *.

1. The existing Regulations regarding *patwáris* have been found to be in many respects defective, and great difficulties and delays have consequently been experienced in the division of estates, the adjustment of the revenue to be assessed on their respective shares, the investigation of summary and other suits for rents, the decision of disputes relating to the limits of estates and villages, and the execution of decrees of the Courts of Judicature, in regard to the possession and property of land:

Preamble.

the reform of the office appears therefore to be an object of the highest importance: * * *.

The following rules have therefore been enacted *****

2. [*Repeal of enactments relating to appointment of patwáris.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

3. Every village paying, or liable to pay, the public revenue shall have a separate *patwári*, except in cases where the Board of Revenue or other authority exercising the power of that Board shall, in consideration of former usage or other sufficient cause, authorise one *patwári* to do the duty of two or more villages, or direct two or more *patwáris* to be established in a single village.

Every village to have separate *patwári*.

4 to 6. [*Every village to have a separate patwári; continuation of patwáris now in office; procedure in nominating patwáris.*] Rep. by the Repealing Act, 1874 (XVI of 1874.)

7. Whenever a vacancy may occur in the office of *patwári*, such vacancy shall be filled on the nomination of the *zamindar* or other landholder or farmer, engaging with * [the Crown] for the public revenue, who is hereby

Vacancies how filled up.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903).

LOCAL EXTENT.—This Regulation was extended to the former Province of Bengal generally by the Bengal Kánungos and Patwáris Regulation, 1819 (1 of 1819), s. 4(2).

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4(2).

²The words in the title and s. 1 as to local extent, which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

³The clause in s. 1 as to commencement and local extent, was repealed, *ibid*.

⁴These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Secs. 8—11.)

enjoined to report such nomination to the Collector of the district within one month after the vacancy has taken place :

Provided, however, that in such nomination the *zamindar* or other landholder or farmer shall be generally guided by the custom which may heretofore have prevailed in the village in respect to the succession of *patwáris*, and shall not deviate therefrom without previously obtaining the sanction of the Collector, and it shall be the duty of the Collectors carefully to see that this rule is observed, and particularly that the just rights of the inferior *pattidárs*, or sharers in joint undivided estates, and of dependent *talukdars*, or other under-tenants of the lands, as connected with the appointment of *patwáris*, are duly maintained.

Procedure of
Collector on
receiving
nomination of
patwári.

8. On receiving the report of the nomination of a *patwári*, as directed to be made in the foregoing section, the Collector is to insert the name of the party in the register of *patwáris* for his district, unless he shall see good and sufficient ground to object to the person so nominated as disqualified for the office, in which case he is immediately to submit his objections to the Board of Revenue, ¹* * * * and the Board ²* * * will decide whether the *zamindar* or farmer shall be called upon to nominate another person, or pass such other order on the question as may appear just and right.

Rules
regarding
patwáris in
joint and
undivided
estates.

9. The proprietors of joint and undivided estates engaging jointly for the public revenue shall be considered jointly and severally bound ³* * * * to nominate a *patwári* in the mode prescribed in ⁴* * * this Regulation, or to show sufficient cause for their failing to do so.

Rules as to
patwáris in
khas estates.

10. In estates held *khas*, and in estates under the superintendence of the Court of Wards, the *patwári* shall be appointed by the Collector.

Penalty in
cases of
refusal or
omission
to comply
with rules.

11. Should any *zamindar* or other proprietor or farmer refuse or omit ⁵* * * to nominate a *patwári* in the cases provided for in ⁶* * * this Regulation within

¹The words "the Board of Commissioners, or the Commissioner in Bihár and Benares, as the case may be," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

²The words "or Commissioner," were repealed, *ibid*.

³The words and figure "to furnish the Collector with the statement required in section 4 and," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴The words and figures "sections 5 and 7 of " were repealed, *ibid*.

⁵The words and figure "to furnish the statement required by section 4 or," were repealed, *ibid*.

of 1817.]

(Secs. 12—15.)

the time prescribed ¹* * *, and shall fail to show good cause for such neglect or failure, it shall be competent to the Collector, with the approval of the Board of Revenue, ²* * * to levy a daily fine upon him until a *patwári* is nominated, or, with such approval, himself to nominate a qualified person for the office.

12. Whenever a *zamindar* or farmer engaging with ³[the Crown] for the public revenue may wish to remove a *patwári* from office, he is to state his reasons for so doing to the Collector of the district, who, if they appear good and sufficient, will authorize the removal of the *patwári*, but not otherwise.

Procedure of
zamindars
wishing to
remove
patwári.

13. Any *zamindar* or other landholder or farmer of land removing a *patwári* from office without the authority of the Collector obtained in the mode prescribed in the preceding section shall be punished by a fine not exceeding fifty rupees for the first offence and one hundred rupees for the second offence;

Penalties for
removing
patwári
without
authority.

and if it should appear, on investigation by the Collector, that the removal was unjust and without sufficient cause, the said *zamindar* or other landholder or farmer of land shall be further subject to a daily fine, with the approbation of the Board of Revenue ⁴* * * but not otherwise, until the *patwári* be restored.

14. Whenever the inferior *pattidárs*, or sharers, or the *rai-yats* or under-tenants of a village may petition the Collector for the removal of the *patwári*, the Collector shall direct such removal, and shall call upon the *zamindar* or other landholder or farmer of land engaging with ³[the Crown] for the public revenue to appoint another *patwári*:

Patwáris
removable on
representation
of under-
tenants.

Provided the reasons adduced for praying such removal appear to the Collector good and sufficient, but not otherwise.

15. Whenever a Collector shall see ground to desire the removal of a *patwári* for neglect of duty or other

Procedure of
Collector
desiring to
remove
patwáris.

¹The words "in those sections," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words "the Board of Commissioners, or the Commissioner in Bihar and Benares, as the case may be," were repealed, *ibid*.

³These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The words "the Board of Commissioners, or the Commissioner in Bihar and Benares," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

(Secs. 16—19.)

sufficient cause, he is to state his reasons to the Board of Revenue, ¹* * * ²* *, who will authorize the removal or not, as may seem proper.

Duties of
patwaris.

16. The duties of the *patwári* shall be—

First.—To keep such registers and accounts relating to the village or villages to which he is appointed, in such manner and form as has heretofore been the custom, or in such other mode as may be hereafter prescribed by the Board of Revenue, ¹* * * together with such further registers and accounts as may be directed by those authorities respectively.

Second.—To prepare and deliver to the *kánungo* of the *pargana*, at the expiration of every six months, a complete copy of the aforesaid accounts showing distinctly the produce of the *kharif* and *rabi* harvests.

Third.—To perform all other duties and services which it has been customary for him to execute.

Transmitting
and recording
patwáris'
accounts.

17. The Board of Revenue ¹* * * * will determine on the mode in which the accounts rendered by the *patwári* to the *kanungo* shall be brought forward by the latter, and recorded in the office of the Collectors.

Payment of
patwáris, and
adjustment of
their allow-
ances in
certain cases.

18. The *patwári* is to be paid hereafter in the same mode as he is now paid, whether in money, or in grain, or in land, or in any other legal manner whatsoever; but it shall be the duty of the several Collectors to complete an account of the mode in which such payment is made in the different *parganas* or other local divisions of their districts, and to submit the result of their researches to the Board of Revenue or other authority exercising the powers of that Board; and it shall be competent to the Board of Revenue or other authority aforesaid, with the sanction of the ³[Provincial Government], to increase or reduce the amount of remuneration paid to the *patwáris* and to alter or modify the mode of its payment, in any case in which sufficient cause for the adoption of such a measure shall exist.

Remuneration
of *patwáris* in
villages where
none are now
appointed.

19. Where no *patwári* has hitherto been appointed, the amount of the remuneration to the *patwári* who may

¹The words "Board of Commissioners, or the Commissioner in Bihar and Benares," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

²The words "as the case may be" which were repealed by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), are omitted.

³These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1817.]

(Secs. 20—23.)

be appointed under this Regulation, and the mode of its payment, shall be regulated by the Collector, with reference to the usage of the adjoining villages.

20. If the remuneration, which a *patwári* has heretofore regularly received or which may be assigned to him by the Collector or other competent revenue authority, be denied to him by the parties who have hitherto paid it, or who may have been directed to pay it by the said authority, he is at liberty to complain against the person so withholding his dues to the Collector, who will proceed to an immediate investigation of the facts, and decide according to the usage of the village; and the Collector is hereby authorized to compel payment of the amount due to the *patwári*, and to fine the offending party according to his situation and circumstances in life:

Procedure on refusal of payment of established remuneration to *patwáris*.

Provided always that the fine in no instance exceed fifty rupees.

21. In all cases in which the decision of the Collector is to be governed by usage, it shall be made an invariable rule to insert in the original proceedings on the case the attested report of the *kánungos* of the *pargana*, as to the custom or usage in reference.

Local usage of *parganas* to be reported by *pargana kánungo*.

22. Collectors of land-revenue are hereby empowered to summon the *patwári* of any village or villages within their respective districts, whenever there may be occasion for his attendance on any matter connected with the duties of his office, and to require him to produce all accounts relating to the lands, produce, rents, collections and charges of the village or villages, the accounts of which may be kept by him, and to examine him on oath to the truth of such accounts, and on any other matters relating to such accounts, or regarding the lands, produce, rents, collections and charges of the village or villages to which the said *Patwári* may belong.

Power to summon *patwári* and to examine him on oath to the truth of his accounts.

When a Collector shall require the attendance of a *patwári* for the purpose above stated, he is to serve such *patwári* with a written notice under his official seal and signature, stating the purpose for which his attendance is required, and the papers (if any) which he is to bring with him.

23. If any *patwári* shall neglect or omit to produce his original accounts on the requisition of a Collector, or to give his evidence respecting them, the Collector is hereby authorized and empowered to cause the said *patwári* to be apprehended, and to order him to be confined in the *Diwani* jail of the district until he produce his accounts, or show sufficient cause for not producing them.

Power to compel *patwáris* to produce their accounts.

(Secs. 24—27.)

In such cases the *patwári* shall be sent by the Collector with a *rubakari* to the Judge of the ^{1*} * *zila*, stating the purport of the order passed against him; and the Judge shall, on those grounds, commit the *patwári* to jail, and detain him until he produce the accounts, or until the Collector applies for his release.

Patwáris to produce accounts when required by Courts of Justice.

24. In like manner *patwáris* shall produce all accounts relating to the lands, produce, collections and charges of the village or villages the accounts of which may be kept by them respectively, and furnish every information and explanation that may be required regarding them, whenever they may be required by any Court of Justice, in any suit that may be depending before the Court;

and if any *patwári* shall neglect or omit to attend with his accounts when required, for the adjustment of any matter or dispute depending in Court, the Courts are authorized to order such *patwári* to be committed to close custody until he produce the accounts, or show sufficient cause for not having produced them.

Power to require attendance of patwáris on officers deputed to examine village accounts and to grant commission to swear patwáris.

25. In any case in which a Collector of land-revenue shall have occasion to depute an officer to examine the accounts of any village or villages, he is authorized to require the *patwáris* to attend such officer, and the Collector is further empowered to grant to such officer a commission to swear the several *patwáris* whose accounts are to be inspected, inserting in the commission the name of each *patwári* to be sworn;

and if any such *patwári* shall neglect or refuse to attend such officer with his accounts, or to give his evidence respecting them, when duly required to do so by a written notice from the Collector, the Collector is hereby authorized and empowered to proceed against such *patwári* in the same mode as if he had refused or neglected to attend or to give his evidence before the Collector himself.

26. [*Patwáris giving false depositions, when guilty of perjury.*] Rep. by the Repealing Act, 1876 (XII of 1876).

Punishment for patwáris falsifying or mutilating village-accounts.

27. * * * any *patwári* who shall alter, fabricate, falsify or mutilate the accounts of the village to which he belongs, or shall furnish to the *kánungo* or Collector

¹The words "City or," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

²The words "In like manner" were repealed, *ibid.*

of 1817.]

(Secs. 28—30.)

false, fabricated or mutilated copies of those accounts, shall be held and considered guilty of forgery, and shall be liable, on conviction, ¹* * * to the penalties which are or may be prescribed for that offence ²* * *;

and any person who shall cause or procure any such forgery shall be liable to the same penalties as those convicted of having actually committed the offence.

28. [*Existing rules requiring the attendance of proprietors, etc., of lands sold or divided, declared still in force.*] Rep. by the Repealing Act, 1876 (XII of 1876).

29. ³* * * whenever an estate or the portion of an estate may be directed to be disposed of at public sale, or may be transferred by the private act of the proprietor or proprietors, or when an estate may be divided pursuant to a decree of a Court of Judicature or at the request of one or more of the proprietors, or when an estate or portion of an estate may be under attachment, the Collector shall be authorized to require the attendance of all descriptions of Native agents employed by the proprietors or farmers of such estates or farms in the management of their lands, or keeping the accounts relating to them, and to examine or to cause them to be examined on oath, touching such accounts, in the same manner as he is authorized by sections 22 and 25 of this Regulation to require the attendance to and take or cause to be taken the examination of *patwáris*;

Power to require attendance of Native agents of proprietors whose estates are to be sold, transferred or divided, and to cause them to be examined on oath touching accounts.

and if such agents shall refuse or neglect to attend the Collector or his officer, when their attendance may be duly required, or to give their evidence, the Collector is authorized and empowered to proceed against them in the same manner as is prescribed in the case of *patwáris* refusing or neglecting to attend.

30. ⁴* * * the rules contained in ⁵[section] ⁶* * * shall be held and considered applicable to all such Native agents employed by proprietors or farmers of land, in the management of their estates or farms, or in keeping the accounts relating to them.

Section 27 applied to Native agents.

¹The words "before a Court of Circuit," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words "in the Regulations," were repealed, *ibid.*

³The words "In like manner" which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁴The words "Provided further that," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁵This word was substituted for the word "sections" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁶Section 30, so far as it relates to s. 26, having been repealed by the Repealing Act, 1876 (XII of 1876), the figure and word "26 and" have been omitted.

(Secs. 31—33.)

Procedure in cases not provided for when attendance of proprietors or farmers with accounts is required.

31. Whenever a Collector of land-revenue, or other officer vested with the powers of a Collector may in any case connected with his public duty, but not provided for in this or any other Regulation in force, have occasion to require the attendance of a *zamindar* or other proprietor or farmer of lands or of the *gumáshta* or other officer or agent of such proprietor or farmer, with the accounts of such lands, he shall report the circumstances to the Board of Revenue ¹* * * * and the ²[Board is] hereby empowered to grant authority to the Collector or other officer aforesaid, to require the attendance of the proprietor or farmer, or of the *gumáshta* or other officer or agent, with all accounts relating to the lands in their possession or management.

Notice to person required to attend.

32. A written notice shall in such cases be issued by the Collector or other officer to the party whose attendance is required, stating the purpose for which he is summoned, and the papers (if any) which he is to bring with him;

Penalty for omission or refusal.

and, if the proprietor or farmer shall omit or refuse to attend, or cause his officer or agent to attend, by the time prescribed in the Collector's requisition, with the accounts and information required, the Board of Revenue ³* * * * are authorized and empowered to impose upon him such daily fine, to be payable daily until he complies with the Collector's requisition, as they may think adequate to his situation and circumstances in life;

The fine ⁴* * * is to be levied by the same process as is prescribed for the recovery of arrears of revenue.

Provision in cases where appointment of village *patuwaris* is inexpedient.

33. In cases in which, from local or other sufficient causes, it may appear impracticable or inexpedient to cause the appointment in any estate or farm of *patuwaris*, in the mode prescribed in this Regulation, as, for

¹The words "the Board of Commissioners, or the Commissioner in Bihar and Benares, according as he may be subject to one or the other of those authorities," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²These words were substituted for the words "Boards are" by the Amending Act, 1891 (XII of 1891). The words "and Commissioner aforesaid," which occurred after "Boards," were repealed by the Repealing Act, 1874 (XVI of 1874), and are omitted.

³The words "Board of Commissioners and Commissioner in Bihar and Benares, as the case may be," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴The words "reporting, however, the amount for the information of the Governor General in Council," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁵The words "when confirmed by Government," were repealed, *ibid.*

of 1817.]

(Secs. 34—36.)

instance, in certain estates consisting chiefly of hills and forests in the south-western frontier, and in very small *maháls*, the accounts of which are kept by the proprietors themselves, it shall be competent to the Board of Revenue ^{1*} * * * to suspend its operation in such estates or farms:

Provided, however, that in all such cases the person by whom the village accounts are kept, whether proprietor or farmer, or *gumáshta* or other officer, shall furnish the *kánungo* of the *pargana* with such accounts and statement, as the Collector, with the approval of the Board ^{2*} * * may direct; and shall be subject to the provisions contained in sections 22, 23, 24, 25 ^{3*} * and 27 of this Regulation; and the proprietors or others by whom they may be employed shall likewise be subject to the provisions contained in '[section] ^{4*} * 27.

34. No Court of Judicature shall take cognizance of the complaint of a *patwári* against the landholder, or the tenants of a village, for refusing to remunerate his labours, nor shall any Court of Judicature take cognizance of any complaint against a Collector for, or on account of, any decision passed by him in virtue of the powers with which he is vested by this Regulation.

In what cases Courts prohibited from taking cognizance of complaints of *patwáris*.

35. (1) Any person aggrieved by a decision or order of a Collector under section 20 of this Regulation may appeal within six months from the date thereof to the Commissioner of the Division.

Appeal to Commissioner from decision or order under section 20.

(2) The Commissioner may reverse or alter any such decision or order in appeal.

36. All sums adjudged by the Collector in favour of a *patwári* under section 20, and all fines directed to be levied by this Regulation, shall be recoverable by the same processes as arrears of the public revenue; and all such fines, when recovered, shall be carried to the account of '[the Provincial Government].

Recovery and appropriation of fines, etc.

¹The words "the Board of Commissioners or the Commissioner in Bihar or Benares, as the case may be," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words "or Commissioner," were repealed, *ibid*.

³Section 33, so far as it relates to s. 26, having been repealed by the Repealing Act, 1876 (XII of 1876), the figure "26" has here been omitted.

⁴This word was substituted for the word "sections" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁵For the reason stated in footnote³ the figure and word "26 and" have here been omitted.

⁶This section was substituted for the original s. 35 by the Amending Act, 1891 (XII of 1891).

⁷These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Regulation III of 1818.

(The Bengal State Prisoners Regulation, 1818)¹.

(7th April 1818.)

A Regulation for the confinement of State Prisoners.

1. Whereas reasons of State, embracing the due Preamble.
maintenance of the alliances formed by the British Government with foreign Powers, the preservation of tranquillity in the territories of Native Princes entitled to its protection, and the security of the British dominions from foreign hostility and from internal commotion, occasionally render it necessary to place under personal restraint individuals against whom there may not be sufficient ground to institute any judicial proceeding, or when such proceeding may not be adapted to the nature of the case, or may for other reasons be unadvisable or improper;

and whereas it is fit that, in every case of the nature herein referred to the determination to be taken should proceed immediately from the authority of the ²[Government];

and whereas the ends of justice require that, when it may be determined that any person shall be placed under personal restraint, otherwise than in pursuance of some judicial proceeding, the grounds of such determination should from time to time come under revision, and the person affected thereby should at all times be allowed freely to bring to the notice of the ²[Government] all circumstances relating either to the supposed grounds of such determination, or to the manner in which it may be executed;

¹SHORT TITLE.—This short title was given by the Amending Act 1897 (V of 1897).

It is in force throughout the Province of Bengal including the Chittagong Hill-tracts and the Darjeeling district.

²This word was substituted for the words "Governor General in Council" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Sec. 2.)

and whereas the ends of justice also require that due attention be paid to the health of every State prisoner confined under this Regulation, and that suitable provision be made for his support according to his rank in life, and to his own wants and those of his family;

and whereas the reasons above declared sometimes render it necessary that the estates and lands of *zamindars*, *talukdars* and others ¹ * * * should be attached and placed under the temporary management of the Revenue Authorities without having recourse to any judicial proceeding;

and whereas it is desirable to make such legal provisions as may secure from injury the just rights and interests of individuals whose estates may be so attached under the direct authority of Government;

²[it is hereby enacted as follows:—]

2. *First*.—When the reasons stated in the preamble of this Regulation ³[may seem to the Government] to require that an individual should be placed under personal restraint, without any immediate view to ulterior proceedings of a judicial nature, “[a warrant of commitment shall be issued by the Government] to the officer in whose custody such person is to be placed.

Proceeding
for placing
persons under
restraint as
State
prisoners.

⁵*Second*.—The warrant of commitment shall be in that one of the forms set out in the Appendix to this Regulation which is appropriate to the case.

Form of
warrant.

⁵*Third*.—The warrant of commitment shall, in relation to a person to be confined for reasons connected with defence, external affairs or the discharge of the functions of the Crown in its relations with Indian States, be sufficient authority for his detention in any fortress, jail or other place in any Governor's Province or Chief Commissioner's Province, and in relation to any person to be confined for reasons connected with the maintenance of public order in a Province shall be sufficient authority for his detention in any fortress, jail or other place in that Province.

Authority of
warrant.

¹The words “situated within the territories dependent on the Presidency of Fort William” were omitted by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for certain words, *ibid*.

³These words were substituted for the words “may seem to the Governor General in Council”, *ibid*.

⁵These words were substituted for certain words, *ibid*.

⁵The second and third paragraphs were substituted for the original paragraphs, *ibid*.

of 1818.]

(Secs. 3—7.)

3. Every officer in whose custody any State prisoner may be placed shall, on the 1st of January and 1st of July of each year, submit a report to the ¹[Government] ²* * * on the conduct, the health and the comfort of such State prisoner, in order that the ¹[Government] may determine whether the orders for his detention shall continue in force or shall be modified.

Officers having custody of State prisoners to submit periodical reports.

4. *First.*—When any State prisoner is in the custody of a *Zila* ³* * * Magistrate, the Judges ⁴* * * are to visit such State prisoner on the occasion of the periodical sessions, and they are to issue any orders concerning the treatment of the State prisoner which may appear to them advisable, provided they be not inconsistent with the orders of the ¹[Government] issued on that head.

State prisoners in custody of *Zila* Magistrate, by whom to be visited.

Second.—When any State prisoner is placed in the custody of any public officer not being a *Zila* ³* * * Magistrate, the ¹[Government] will instruct either the *Zila* ³* * * Magistrate, or the Judge ⁴* * *, or any other public officer, not being the person in whose custody the prisoner may be placed, to visit such prisoner at stated periods and to submit a report to Government regarding the health and treatment of such prisoner.

State prisoners in custody of public officer, not being *Zila* Magistrate, by whom to be visited.

5. The officer in whose custody any State prisoner may be placed is to forward, with such observations as may appear necessary, every representation which such State prisoner may from time to time be desirous of submitting to the ¹[Government].

Representations by State prisoners to be submitted to Government.

6. Every officer in whose custody any State prisoner may be placed shall, as soon after taking such prisoner into his custody as may be practicable, report to the ¹[Government] whether the degree of confinement to which he may be subjected appears liable to injure his health, and whether the allowance fixed for his support be adequate to the supply of his own wants and those of his family, according to their rank in life.

Report to Government regarding confinement, etc., of prisoners.

7. Every officer in whose custody any State prisoner may be placed shall take care that the allowance fixed for the support of such State prisoner is duly appropriated to that object.

Appropriation of allowance for support.

¹This word was substituted for the words "Governor General in Council," by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words "through the Secretary to Government in the Political Department" were omitted, *ibid.*

³The words "or City," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁴The words "of Circuit," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

(Secs. 7A—9.)

Division of functions between Central Government and Provincial Government.

7A. (1) Where a person is, or is to be, confined in a Governor's Province under this Regulation for reasons connected with defence, external affairs or the discharge of the functions of the Crown in its relations with Indian States, the warrant of commitment, and any orders as to his release or the place of his detention shall be issued by the Central Government, and the amount of the allowance to be fixed for his support shall be fixed by the Central Government and shall be paid by the Central Government to, and applied by, the Provincial Government; and all reports and representations to be made under the foregoing provisions of this Regulation shall be submitted and forwarded both to the Central Government and the Provincial Government.

(2) Subject as aforesaid, all things to be done by or to the Government in relation to any persons confined or to be confined under this Regulation shall be done by or to the Provincial Government.

(3) References in the preceding sections of this Regulation to the Government shall be construed in accordance with the foregoing provisions of this section.

(4) No Government shall, in relation to any person confined or to be confined for reasons of State connected with the discharge of the functions of the Crown in its relations with Indian States, act otherwise than with the concurrence of the Crown Representative.

8. [*Applicability of ss. 3 to 7 to persons now confined as State prisoners.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

Attachment of estates by order of Government without decision of court.

9. Whenever the ²[Provincial Government], for the reasons declared in the preamble to this Regulation, shall judge it necessary to attach the estates or lands of any *zamindar, jagirdar, talukdar* or other person, without any previous decision of a Court of Justice or other judicial proceeding, the grounds on which the Resolution of Government may have been adopted, and such other information connected with the case as may appear essential, shall be communicated * * * to the Judge and

¹Section 7A was inserted by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "Governor General in Council," *ibid.*

³The words, "under the hand of one of the Secretaries to Government" were omitted, *ibid.*

of 1818.]

(Secs. 10—12.)

Magistrate of the district in which the lands or estates may be situated, ¹[and] ²* * * to the *Sadar Diwāni Adalat* and *Nizamut Adalat*.

10. *First.*—The lands or estates which may be so temporarily attached shall be held under the management of the officers of Government in the Revenue Department; and the collections shall be made and adjudged on the same principles as those of other estates held under *khas* management.

Management of attached estates.

Second.—Such lands or estates shall not be liable to be sold in execution of decrees of the Civil Courts, or for the realization of fines or otherwise, during the period in which they may be so held under attachment.

Attached lands not liable to sale in execution.

Third.—In the cases mentioned in the preceding clause the Government will make such arrangement as may be fair and equitable for the satisfaction of the decrees of the Civil Courts.

Government to arrange for satisfaction of decrees.

11. Whenever the ³[Provincial Government] shall be of opinion that the circumstances which rendered the attachment of such estate necessary have ceased to operate, and that the management of the estate can be committed to the hands of the proprietor without public hazard or inconvenience, the Revenue-authorities will be directed to release the estate from attachment, to adjust the accounts of the collections during the period in which they may have been superintended by the officers of Government, and to pay over to the proprietor the profits from the estate which may have accumulated during the attachment.

Rules as to cases where Government orders release of estate from attachment.

12. This Regulation, so far as it relates to the confinement of persons for reasons connected with defence, external affairs and the discharge of the functions of the Crown in its relation with Indian States, extends to the whole of all the Governors' Provinces and Chief Commissioners' Provinces; and so far as relates to other matters, extends to all those Provinces except Madras, Bombay and Sind.

Extent.

¹The word "and" was inserted by the Amending Act, 1891 (XII of 1891).

²The words "to the Provincial Court of Appeal and Circuit, and" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³These words were substituted for the words "Governor General in Council" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴Section 12 was inserted, *ibid*.

The Bengal State Prisoners Regulation, 1818.

(Appendix.)

[Ben. Reg. III of 1818.]

¹APPENDIX.

FORMS OF COMMITMENT.

Form of commitment for reasons connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

To the (*here insert the officer's designation*).

Whereas the [Governor General in Council] [Governor General] (*omit the inappropriate words*) for good and sufficient reasons, being reasons connected with [defence, external affairs and the discharge of the functions of the Crown in its relations with Indian States] (*omit any inappropriate words*), has seen fit to determine that (*here insert the State prisoner's name*) shall be placed under personal restraint at (*here insert the name of the place*) you are hereby required and commanded in pursuance of that determination to receive the person abovenamed into your custody and to deal with him in accordance with the orders of the Government and the provisions of the Bengal State Prisoners Regulation, 1818.

Form of Commitment in Other Cases.

To the (*here insert officer's designation*).

Whereas the [Governor] [Governor General in Council] [Governor General] (*omit the inappropriate words*) for good and sufficient reasons, being reasons connected with the maintenance of public order, has seen fit to determine that (*here insert the State prisoner's name*) shall be placed under personal restraint at (*here insert the name of the place*) you are hereby required and commanded, in pursuance of that determination, to receive the person abovenamed into your custody, and to deal with him in conformity with the orders of the Government and the provisions of the Bengal State Prisoners Regulation, 1818.

¹This Appendix was inserted by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Regulation I of 1819.

(The Bengal Kanungos and Patwaris Regulation, 1819).¹

(5th February 1819.)

A Regulation * * * for re-establishing Kanungos and reforming the office of Patwari throughout the Province of Bengal; and for explaining and modifying certain parts of Regulation XII, 1817.²

1 to 3. [Preamble; controlling Revenue-authorities in Dinajpur, Rangpur and Gorakpur.] Rep. by the Repealing Act, 1873 (XII of 1873).

4. First.—*Kanungos* shall be appointed throughout the Province of Bengal in the same manner, and for the performance of the same duties, as are prescribed in Regulation V, 1816,⁴ in regard to the district of Cuttack, the *pargana* of Pataspur, and its dependencies; and all the rules contained in the Regulation aforesaid are hereby extended generally to the Province of Bengal.

Appointment of *kanungos* throughout Bengal.

Second.—The provisions of Regulation XII, 1817,³ are in like manner hereby extended to the several districts of the said Province to which they have not yet been applied.

Regulation XII of 1817 extended.

Third.—Provided, however, that in cases in which it may not appear advisable, from whatever cause, to leave the selection and nomination of the *kanungos* to the Collector of the district, it shall be competent to the "[Provincial Government]" to appoint such other officer specially to perform that duty, as "[it]" may judge expedient; and the officer so appointed shall have and exercise, during such period as the "[Provincial

Nomination of *kanungos* by persons other than Collectors.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation extends to the whole of the former Province of Bengal—see s. 4(1); but it may be suspended in any *mahd*—see s. 4 (4), and its application is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900). s. 4(2).

²The words "for replacing the districts of Dinajpur and Rangpur under the management of the Board of Revenue; for extending the authority of the Board of Commissioners in Bihar and Benares to the district of Gorakpur," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³The Bengal Patwaris Regulation, 1817.

⁴The Bengal Kanungos Regulation, 1816.

⁵These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶The word "he" in the original text is to be read as if the word "it" were substituted therefor—see the Amending Act, 1903 (I of 1903).

(Sec. 5.)

Government] may direct, the same powers as are vested generally in Collectors of land-revenue under the provisions of Regulation V, 1816¹, and Regulation XII, 1817².

But nothing herein contained shall be construed to preclude the person holding permanently the office of Collector in such district from discharging the ordinary duties of his situation under the general rules and Regulations applicable to that branch of the public service.

Power to suspend operation of rules regarding *kánungos* and *patwáris*.

Fourth.—Provided further that it shall be competent to the ³[Provincial Government] to suspend the operation of the rules contained in this or any former Regulation, regarding *kánungos* and *patwáris*, within any *maháls*, in which the establishment of such officers, as prescribed in those rules, may appear to be inexpedient.

Board of Revenue may alter duties of *kánungos*.

Fifth.—Provided likewise that it shall be competent to the Board of Revenue or other authority exercising the powers of that Board to make such alteration in the duties to be performed by *kánungos* as local circumstances shall suggest * * * * *

And suspend operation of regulation XII, 1817, in certain places.

Sixth.—Provided also that it shall be competent to the Board of Revenue to suspend by proclamation the operation of the rules of Regulation XII, 1817², in the districts of Chittagong * * * and in any other parts of the country in which individual estates may generally be of inconsiderable extent, until they shall have determined, under the discretion vested in them by sections 3, 18 and 33 of that Regulation, the number of *patwáris* to be appointed or retained, the mode in which they are to be remunerated and the *maháls* to be permanently exempted from its general operation.

Collector may nominate and appoint *patwári* in certain cases.

5. In all cases in which any village or villages, or any lands whatsoever the accounts of which may be kept by a single *patwári*, shall be held by two or more persons under distinct engagements with Government, it

¹The Bengal *Kanungos* Regulation, 1816.

²The Bengal *Patwaris* Regulation, 1817.

³See foot-note⁵ on p. 165, *ante*.

⁴The words and figures "anything in section 7, Regulation IV of 1808, and other corresponding enactments, to the contrary, notwithstanding," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁵The words "and Sylhet," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

of 1819.]

(Secs. 6, 7.)

shall be competent to the Collector, with the approval of the Board of Revenue or other authority exercising the powers of that Board, to assume, the direct nomination and appointment of such *patwári*, with or without a reference to the proprietors.

But in all such cases the Collector shall deviate as little as possible from established usage, and shall be careful to consult the inclinations, and maintain the interests, of all persons connected with the *maháls* in question.

6. In explanation of section 11, Regulation XII, 1817¹, it is hereby declared and enacted that, if any proprietor or farmer of land shall refuse or omit to furnish the statement required by section 4² of that Regulation within the period therein prescribed, or at any subsequent period, when called upon to do so by the Collector or other officer exercising the powers of Collector, it shall be competent to the Collector or other officer aforesaid, with the approval of the Board of Revenue or other authority exercising the powers of that Board, to levy a daily fine upon such proprietor or farmer, until the statement required be furnished, to such amount as may appear proper, with reference to the circumstances of the case, and to the condition in life of the offender.

Explanation
of section 11,
Regulation
XII, 1817.

7. The penalties prescribed in section 13, Regulation XII, 1817¹, for the illegal removal of a *patwári* from office, by a *zamindar* or other proprietor or farmer of land, are hereby declared applicable to all persons whatsoever who may, without due authority, remove from office any *patwári* duly constituted or appointed; or who may oppose a *patwári* so appointed or constituted, in the performance of his duties; or who may prevent his performing them, or who may resist or evade the entry of a *patwári*, when duly appointed into the possession of his office.

Penalty for
unauthorized
removal, etc.,
of *patwári*

¹The Bengal *Patwaris* Regulation, 1817.

²Section 4 of Ben. Reg. XII of 1817 was repealed by the Repealing Act, 1874 (XVI of 1874).

Bengal Regulation II of 1819.

[The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.]

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[Ben. Reg. II of 1819.]

SECTION.

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- 29, 30. (Repealed.)
31. *First*.—Regulation not to affect right of proprietors to waste-land guarantee at permanent settlement.
Second.—Nor to warrant claim to additional revenue from lands permanently assessed on plea of error or fraud.
Exception.

Bengal Regulation II of 1819.

[The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.]¹

(12th February 1819.)

A Regulation for modifying the provisions contained in the existing Regulations, regarding the resumption of the revenue of lands held free of assessment under illegal or invalid tenures, and for defining the right of Government to the revenue of lands not included within the limits of estates for which a settlement has been made.

1. The rules contained in Regulations XIX² and XXXVII,³ 1793, relative to the resumption of the revenue of lands held free of assessment under illegal or invalid tenures, and the corresponding provisions enacted in subsequent years, having been found inadequate to secure the just rights of Government, have from time to time been partially repealed or modified. Preamble.

Those rules, however, are still in force within several of the districts subordinate to this Presidency, and the Regulations by which they have in other districts been superseded appear to be in several respects defective.

It further appears to be necessary, in order to obviate all misapprehension on the part of the public officers, or of individuals, to declare generally the right of Government to assess all lands which, at the period of the decennial settlement, were not included within the limit of an estate for which a settlement was concluded with the owners, not being lands for which a distinct settlement may have been made since the above period, nor

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of s. 1.

It has been declared by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

²The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

³The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.

[Ben. Reg. II

(Secs. 2, 3.)

lands held free of assessment under a valid and legal title; and at the same time formally to renounce all claim on the part of Government to additional revenue from lands which were included within the limits of estates for which a permanent settlement has been concluded, at the period when such settlement was so concluded, whether on the plea of error or fraud, or on any pretext whatever, saving, of course, *mahals* expressly excluded from the operation of the settlement.

With the view, therefore, of establishing, on proper principles, one uniform course of proceeding in resuming the revenue of lands liable to assessment, so that the dues of Government may be secured without infringement of the just rights of individuals, the following rules have been enacted, to be in force from the date of their promulgation throughout the Provinces immediately subordinate to the Presidency of Fort William.

2. [Repeals.] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

Lands not included in decennial settlement, etc., liable to assessment, except lands held free of assessment under valid title.

3. *First.*—It is hereby declared and enacted that all lands which, at the period of the decennial settlement, were not included within the limits of any *pargana*, *mauza*, or other division of estates for which a settlement was concluded with the owners, not being lands for which, a distinct settlement may have been made since the period above referred to, nor lands held free of assessment under a valid and legal title of the nature specified in Regulations XIX¹ and XXXVII², 1793, and in the corresponding Regulations subsequently enacted, are and shall be considered liable to assessment in the same manner as other unsettled *mahals*; and the revenue assessed on all such lands, whether exceeding one hundred *bighas* or otherwise, shall belong to ³[the Crown]:

Proviso.

Provided, however, that nothing in the above rule shall be construed to affect the rights reserved to *zamindars*, *talukdars* and other proprietors of estates with whom a permanent settlement has been concluded, to the exclusive enjoyment of the rent assessed on lands held on an invalid tenure, free of assessment, within the limits of their respective estates and *taluks*, and of

¹The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

²The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.

³These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1819.]

(Secs. 4.)

which the extent may not exceed one hundred *bighas* if in Bengal, [*Bihar or Orissa*] ¹* * *.

Second.—The foregoing principles shall be deemed applicable not only to tracts of lands such as are described to have been brought into cultivation in the Sundarbans, but to all *chars* and islands formed since the period of the decennial settlement, and generally to all lands gained by alluvion or dereliction since that period, whether from an introcession of the sea, an alteration in the course of rivers or the gradual accession of soil on their banks.

Same principle applicable to *chars* and alluvion lands.

Third.—The same principle shall likewise be deemed applicable to all land which, though included at the period of the permanent settlement within the limits of *taluks* held by individuals under special *pattas* from the Collector, such as the *patitābādī* and *jāngal-bārī tāluks* in the districts of the 24-Parganas and Jessore, may not have been permanently assessed at the above-mentioned period:

Also to lands included within particular *taluks*.

Provided, however, that in respect to such lands, if in the possession of the original *patta*-holder, or his legal representative, the conditions of the *patta* in regard to the assessment of the land included within the limits specified in that instrument shall be strictly maintained.

Proviso.

4. The several rules prescribed in Regulations XIX² and XXXVII³ of 1793. * * * and XII of 1805⁴ for determining the validity of grants for holding lands exempt from the payment of public revenue, are hereby declared applicable to grants for holdings lands under *mukarrari* or other tenures limiting the demand of ⁵[the Crown]:

Application of existing rules to grants for holding lands under *mukarrari* or other tenures.

Provided, however, that nothing in this section shall be construed to affect the rules contained in Regulation VIII, 1793⁷, relative to the assessment of lands

Proviso.

¹The words "and fifty *bighas* if within the province of Benares," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

³The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.

⁴The words and figures "and Regulations 41 and 42 of 1795, Regulations 31 and 36 of 1803, Regulation 8," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁵The Cuttack Land-revenue Regulation, 1805.

⁶See foot-note 3 on p. 172, *ante*.

⁷The Bengal Decennial Settlement Regulation, 1793.

(Secs. 5.)

held under valid grants or leases of the above nature
 10 * * *

Power to
direct
investigation
regarding
liability of
lands to be

5. *First*.—Whenever a Collector of revenue or other officer exercising the powers of Collector shall have reason to believe that any lands lying within the sphere of his official control are liable to assessment, either as being held under an invalid tenure free of assessment, or at an inadequate *jama*, or as being liable to assessment on the principles stated in section 3 of this Regulation, he shall report the circumstances to the Board of Revenue or other authority exercising the powers of that Board, who, should they be of opinion that proper grounds exist for inquiry, shall direct the Collector or other officer aforesaid to enter on an investigation of the case in the manner hereafter mentioned.

Notice to party.

Second.—The Collector, on receiving the authority of the Board of Revenue, shall call the party before him by a notice stating the demand of ¹[the Crown] on the lands, and requiring him to attend either in person or by *vakil*, within the period of one month, and to produce all *sanads* or other writings in virtue of which he may possess the lands, or under which they may have been, or may be, claimed to be held free of assessment, or at a fixed *jama*.

Or to his
agent if
accredited
agent reside
at *sadar*
station.

Third.—If the persons whose lands it is proposed to assess have an accredited agent at the *sadar* station, with general powers to act for his principal, the notice to be issued under the preceding clause shall be tendered to such agent, to be communicated by him to his principal, and the agent's acknowledgment to be endorsed upon it shall be accepted as a sufficient service of it, if he be desirous of giving such acknowledgment in preference to the notice being served on the person of his principal by a *chaprasi* or peon of the Collector.

Notice on
principal to
be served
through *nazir*
by single
peon.

Fourth.—If the person, the revenue of whose lands it is proposed to resume, shall not have an accredited agent at the *sadar* station of the description above-mentioned, or if such agent shall decline receiving the notice for communication to his constituent, and the defendant be resident within the Collectorship, it shall be served on him through the *nazir* of the Collector by a single *chaprasi* or peon, who shall require the acknowledgment of the party to be endorsed upon it, or, if

¹The words and figures "nor to alter the provisions contained in Regulation 1, 1816, by which tenures of that description are declared liable to assessment on the death of the grantee," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted

²See foot-note³ on p. 172. *ante*.

of 1819.]

(Sec. 6.)

he be absent from his usual place of residence, the acknowledgment of his principal agent, or of any person acting for him during his absence.

If the party be resident within the jurisdiction of any other Collectorship than that in which the lands proposed to be assessed are situated, the notice shall be transmitted to the Collector of the district in which the party may reside, to be served in the manner above directed.

Notice how served if party reside in another jurisdiction.

If the party be neither resident within the Collectorship in which the lands in question may be situated, nor in any other Collectorship, the notice shall be served upon his agent or representative in charge of the lands.

Fifth.—Provided always that, if any party or his agent in charge of his land, on whom a notice may be served in the manner above prescribed, shall refuse to acknowledge the receipt of it when required by the person serving it, the tender of the notice to such party or his agent shall be taken for a sufficient service; such tender to be proved by the evidence of two persons residing on the lands or in the nearest village.

If acknowledgment be refused, tender of notice sufficient

Sixth.—The Collector shall, in the notice summoning the party, warn him that, if he withhold any writings of the nature specified in the second clause of this section within the period prescribed, they will not afterwards be received unless he shall show good and sufficient cause for not producing them and shall assign such cause on his appearing before him.

Contents of notice.

6. First.—If the holder of such lands to whom a notice may have been issued as directed in the preceding section shall abscond, or is not after diligent search to be found, or shall shut himself up in any house or building, or retire to any place, so that the notice cannot be served upon him, the Collector or other officer exercising the power of Collector, on receiving the *nazir's* return to this effect, shall issue a proclamation, to be affixed in some conspicuous part of his *cutcherry*.

If notice cannot be served, proclamation to be issued.

The proclamation shall be written ¹[in the vernacular of the district], and it shall contain a copy of the former notice and a further notification to the party that, if he shall not appear on a day to be fixed (which shall not be less than fifteen days from the time that the proclamation may be fixed up), the Collector will proceed, without further notice, to hold the inquiry *ex parte*.

The Collector or other officer exercising the power of Collector shall likewise order a copy of the proclamation and notice to be fixed up, with all practicable

¹These words were substituted for certain words by the Amending Act, 1891 (XII of 1891).

(Secs. 7—10.)

despatch, on the outer door of the house in which the holder of the lands may have usually dwelt, or in some conspicuous place in the chief village within, or in the neighbourhood of, the lands proposed to be assessed.

Nazir's return how made.

Second.—The *nazir* shall return the order with an endorsement stating at what times and places the proclamation may have been fixed up.

The return of the *nazir* shall be filed with the Collector's proceedings in the case.

If party does not appear, or refuses to answer, case to be investigated.

If the party shall not appear at the time limited in the proclamation, or if a party who may have been served with a notice shall not appear within the time therein limited, or if, having appeared, he shall refuse to give answer, the Collector shall proceed to investigate and decide upon the case in the same manner as if the party had appeared, answered and entered into proof.

What inquiry to be made.

7. In cases of land supposed to be liable to assessment under the provisions of section 3 of this Regulation, the Collector or other officer exercising the powers of Collector shall institute a full and particular inquiry into the circumstances and condition of the land in question at the period of the decennial settlement, and, in cases of alluvion land, into the period of its formation.

Collector with sanction of Board may cause survey or measurement.

8. When an inquiry in regard to land of the nature of that described in the foregoing section shall have been authorized, it shall be competent to the Collector, with the sanction of the Board of Revenue or other authority exercising the powers of that Board, previously obtained, to cause a survey or measurement to be made of all such lands, and of the estate to which such lands may be alleged to belong.

Collector may summon patwari, and require accounts and examine on oath.

9. It shall likewise be competent to the Collector, in all cases of inquiry held under the provisions of this Regulation, to summon the *patwari*, *gumashta* or other person by whom the accounts relating to the lands proposed to be assessed, or to the estate to which the lands may be alleged to belong, are kept and to require him to produce all accounts relating to such lands or estate, and to examine him on oath to the truth of such accounts, and on any other matter relating to such accounts, or regarding such lands or estate, in the manner specified in section 22, Regulation XII of 1817.¹

And may require attendance of person claiming land, with his accounts.

10. It shall be further competent to the Collector in such cases, with the sanction of the Board of Revenue or other authority exercising the powers of that Board, to require the person claiming to be proprietor or

¹The Bengal Patwaris Regulation, 1817.

of 1819.]

(Secs. 11—13.)

farmer of the lands proposed to be assessed, or of the estates to which they are alleged to belong, to attend either in person or by representative, and to produce all the accounts relating to such lands or estate within a reasonable period, not being less than one week.

11. 1* * Whenever the Collector or person exercising the powers of Collector shall require the attendance of any proprietor or farmer, or of any *patwári* or *gumashta* or other officer for the purpose stated in the above section, he is to serve such proprietor or other person as aforesaid with a written notice under his official seal and signature, stating the purpose for which his attendance is required, the papers (if any) which he is to bring with him, and the period within which he is to attend.

Notice to
such person.

Second. [Mode of serving notice.] Rep. by the Repealing Act, 1876 (XII of 1876).

12. If any *patwári*, *gumashta* or other person by whom the accounts of lands are kept, and who may be summoned by a Collector [or Commissioner] under the provisions contained in sections 9 and 11 of this Regulation, shall neglect or omit to produce his original accounts on the requisition of the Collector [or Commissioner], or to give his evidence regarding them, or shall intentionally and deliberately give a false deposition on oath before the Collector [or Commissioner], when summoned and examined as aforesaid, or shall alter, fabricate, falsify or mutilate the accounts relating to such lands, or to the estate to which such lands are stated to belong, [he] shall be and be held liable to the pains and penalties specified in sections 23 ** * and 27 of Regulation XII, 1817⁴, according as the provisions of one or other of those sections may be applicable to the offence committed by him.

Penalties on
patwaris
neglecting to
produce
accounts,
falsifying
them or
giving false
evidence.

13. First.—If the holder of any lands in regard to which the Collector shall have been authorized by the Board of Revenue or other authority exercising the powers of that Board to institute the inquiry described by section 7 of this Regulation shall refuse or neglect to furnish the accounts relating to such lands within the period specified in the Collector's requisition, the Board

Lands may be
attached, if
holders
neglect to
furnish
accounts.

¹The word "First" which was repealed by the Repealing Act, 1876 (XII of 1876), is omitted.

²This word was inserted by the Amending Act, 1891 (XII of 1891).

³The figure "26," was repealed, *ibid.*

⁴The Bengal Patwaris Regulation, 1817.

(Sec. 14.)

of Revenue or other authority exercising the powers of that Board shall be competent to direct the lands to be immediately attached, and the rents collected on account ¹[of the Crown], in the same manner as if the lands were the property ¹[of the Crown].

Inquiry in such cases.

In such cases, however, it shall still be the duty of the Collector to make a full inquiry into the title of the holder of the lands, and to transmit his proceedings to the Board who will decide whether the lands shall be deemed permanently liable to assessment.

Accounts not furnished to Revenue authorities not afterwards to be received in evidence in suits to contest their decision. Exception.

Second.—Provided further that, if the holder of any lands assessed under the rules of this Regulation shall institute a suit in Court to contest the decision of the Revenue-authorities, and shall produce any accounts or documents besides such as he may have delivered to the Collector, the accounts or documents so produced shall not be received by the Court in evidence, nor shall they have any weight in the decision, any more than if they had never existed, unless he shall show good cause, to the satisfaction of the Court, for not having produced the said accounts or documents, and shall prove that he assigned such cause in answer to the Collector's requisition, or show good cause for not having done so.

Fines for non-attendance of proprietor or agent, or for omission to furnish accounts.

Third.—Provided also that, if any proprietor or farmer shall omit or refuse to attend, or to cause his officer or agent to attend, when duly summoned by the Collector [*or Commissioner,*] by the time prescribed in the notice issued by the Collector [*or Commissioner,*] or shall omit or refuse to furnish the accounts or documents required, and to show sufficient cause for such omission, the Board of Revenue or other authority exercising the powers of that Board, are authorized and empowered to impose upon him such daily fine, to be payable daily, until he complies with the Collector's requisition, as they may think adequate to his situation and circumstances in life, reporting, however, the amount for the information of the ²[Provincial Government].

The fine, when confirmed ³[by the Provincial Government], is to be levied by the same process as is prescribed for the recovery of arrears of revenue.

Penalties for resistance of process.

14. If any *zamindar* or other person shall resist, or cause to be resisted, the attachment or measurement of

¹These words were substituted for the words "of Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "Local Government" by paragraph 4(1), *ibid*.

³These words were substituted for the word "by Government" by Sch. XIV, *ibid*.

of 1819.]

(Secs. 15, 16.)

lands which the Board of Revenue or other authority exercising the powers of that Board shall have authorized the Collector [*or Commissioner*] to attach or measure under the provisions of this Regulation, or shall resist or cause to be resisted any process duly issued by the Collector [*or Commissioner*] to compel a *patwari*, *gumashta* or other officer to produce his accounts, and to give his evidence respecting them under the provisions contained in section 9 of this Regulation, it shall be competent to the Board of Revenue or other authority exercising the powers of that Board, on being satisfied that he is guilty of the charge, to adjudge the *zamindar* or other person so offending to pay such fine to ¹[the Provincial Government] as may appear to it proper, upon a consideration of his situation and circumstances in life, and of the offence which he may have committed, and to levy the fine in the mode prescribed for the recovery of arrears of revenue :

Provided, however, that, if the fine shall exceed five hundred rupees, the Board shall submit a report of the case to the ²[Provincial Government], and shall not proceed to levy the fine until they shall receive authority from ¹[the Provincial Government] for that purpose.

Proviso.

15. When the party whose lands it may be proposed to assess shall appear in conformity with the notice or summons, and shall deliver up his title-deeds, the Collector shall give a receipt for them, and, after duly examining them, shall deliver to the party a statement of the grounds on which his land may appear liable to assessment, with copies, on plain paper, of all documents on which his opinion may be founded.

Procedure when parties attend and produce title-deeds.

The Collector shall then desire the party to deliver a written answer within seven days.

16. It shall be the duty of the Collector or other officer exercising the powers of Collector carefully to number, mark, date and sign all documents produced by a *zamindar* or other person in possession of the lands proposed to be assessed in support of his claim to hold them free of assessment, or as parcel of an estate for which a permanent settlement shall have been concluded, and to insert in his proceedings the title and number of such documents, so that no doubt may exist in regard to their having been exhibited before him ;

Procedure in respect of documents produced.

and the Collector shall, before proceeding to judgment, warn the party that no accounts or other documentary evidence of any kind which he shall not produce before him, and for not producing which he may

¹These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 2 on p. 178, *ante*.

(Secs. 17—21.)

not assign good and sufficient cause, will be received at any future period, either by the Revenue or Judicial Authorities, and shall record his having done so on the face of his proceedings.

Witnesses for and against claim of Government to be examined.

17. On receiving the answer of the party the Collector shall summon any witnesses he may deem necessary to support the claim of Government, with any which the party may desire to have summoned on his behalf, and shall take their depositions in judicial form, and in the presence of the party or his authorized agent.

Examination of documents.

18. The Collector shall carefully examine all documents that may be produced by the party, and shall likewise give the party access to inspect all documents on which he may rely in proof of the liability of the land to assessment.

Collector's authority to summon witnesses and administer oath.

19. *First.*—The Collectors and other officers exercising the powers of Collectors are hereby authorized to summon witnesses and administer oaths, or cause the execution of solemn declarations in lieu thereof, in all cases brought before them under this Regulation

Second. [Penalties for perjury applicable to witnesses who affirm.] Rep. by the Repealing Act, 1873 (XII of 1873).

Third. [Penalties for resistance of process.] Rep. by the Repealing Act, 1876 (XII of 1876).

Procedure on completion of inquiry.

20. Having closed his proceedings, the Collector shall record his opinion in a * * * *rubakari* detailing the grounds on which it is founded, and whether the lands appear liable to assessment or otherwise and shall forward his proceedings to the Board of Revenue or other authority exercising the powers of that Board, in such mode as may be directed by that authority, furnishing the party at the same time with a copy on plain paper of the final *rubakari* aforesaid, and reporting his having done so to the Board or other authority as aforesaid.

Procedure of Board on receipt of Collector's proceedings.

21. *First.*—The Board of Revenue or other authority aforesaid, after calling for any further evidence which, on a consideration of the Collector's proceedings, they may deem wanting, shall, on a day to be fixed by a public notice affixed in the office, not being less than six weeks from the date on which the Collector may have furnished the party with a copy of his final *rubakari*, and after hearing anything which the party, if in attendance, may wish to urge in his own behalf, proceed

¹Portion repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

²The word "Persian," was repealed, *ibid.*

of 1819.]

(Sec. 22)

to pass judgment in the case, and shall record their opinion in a * * * *rubakari*, delivering a copy thereof to the party on his requisition to that effect.

Second.—The final *rubakaris* which the Collectors and the ²[Board] are by the provisions of this section directed to record shall contain a distinct statement of the subject-matter of the case, the grounds on which the decision may be given, the names of the witnesses whose depositions may have been taken and the title of every exhibit read.

Final *rubakaris*.

Third.—If the Board of Revenue or other authority aforesaid pronounce against the assessment, the proceedings shall be considered final, except on proof in a Court of Judicature of fraud or collusion in the previous inquiry.

In what cases decision of Board final.

Fourth.—In the event of the Board's declaring the lands liable to assessment, the Collector shall inform the party or his *vakil* of the decision of the Board and shall proceed to ascertain the limits of the land, and shall fix an assessment on the principles of the general Regulations on such information as may be procurable.

If land declared liable to assessment, Collector to fix assessment.

22. *First.*—If the party shall, within a fortnight of his receiving intimation of the Board's decision, tender to the Collector responsible security for the payment from that date of the *jama* which may eventually be fixed on the land, with interest at the rate of twelve per cent., and shall engage to institute a suit in the Court in which the case may be cognizable within ten days, commencing from the date of the deed of security, or (if the Court shall be shut, and shall not be opened until after the expiration of such ten days) within three days, calculating from the day on which it may be opened, to try the justness of the demand, the Collector shall leave the party in possession as before, reporting the circumstance for the information of the Board:

When party may be left in possession of land.

Provided, however, that in such cases the party shall produce all his accounts of collections for the information of the Collector in estimating the amount of the security to be required.

Proviso.

Second.—If the party be willing to give security for a portion only of the *jama* eventually assessable on the land, it shall be competent to him to do so on the conditions above specified.

Procedure of Collector if party do not furnish full security.

In this case the Collector shall, under the orders of the Board either hold the lands *khas* or farm them for such period as the Board may direct, and shall pay to the party a portion of the collections proportionate to

¹The word "Persian," which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

²This word was substituted for the word "Boards" by the Amending Act, 1903 (I of 1903).

(Secs. 23—26.)

the amount for which he may be willing and able to give responsible security.

Court may determine on sufficiency of security tendered.

Third.—It shall be competent to the Court to direct the Collector to take the security offered by the party, if he shall refuse to do so, and the Court shall be satisfied that it is sufficient; but it shall rest with the Collector, subject to the directions of the Board, to fix the amount for which the surety is to be held bound.

Amount of security how regulated.

Fourth.—The amount shall not, in the first instance, exceed the estimated annual revenue assessable on the lands, or the amount receivable by the party in one year, with interest; but if, at the expiration of one year from the date on which the party may receive intimation of the Board's decision, the suit shall still be pending, it shall be competent to the Collector to require additional security for the same amount.

Security in case of *mukarraris*.

Fifth.—In *mukarraris* the parties giving security, and intending to sue, shall continue to pay the *mukarrari jama*, and will be required to give security for the remaining revenue which may be eventually demandable from them.

Final assessment.

23. If the party do not give security, or, having given security, neglect to sue, the Collector shall proceed to the final assessment of the land.

Limitation of suits in Civil Courts.

24. *First.*—Persons whose lands may be assessed, either in failure to give security or to institute a suit within the prescribed time, shall nevertheless be entitled to sue any time within one year from the date of their being informed of the Board's decision; but after the above period shall have elapsed the decision of the Board shall be final and conclusive:

Proviso.

Provided, however, that in cases in which the party may be able to show good and sufficient cause for not having sued within the said period, such as minority or absence, no limitation as to time shall prevail other than that generally prescribed by the existing Regulations in regard to private claims.

Second.—[*Further proviso.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

25. [*Courts in which suits under this Regulation are to be instituted.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

Appeal from Zila to Sadar Court.

¹**26.** *First.*—In cases instituted in the Zila Court * * *, an appeal shall be received by the Court of Sadar Divani Adalat * * *.

¹Section 26 is modified by the Bengal Revenue-free Lands Regulation, 1825 (XIV of 1825), s. 6, and is saved by the Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1828 (III of 1828), s. 10 (4).

²Words repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

of 1819.]

(Secs. 27, 28.)

Second.—¹* * * The *Sadar Diwani Adalat* ¹* * * in all cases of ¹* * * appeal being preferred in conformity with the provisions of this Regulation, shall, together with the decree against which such appeal may be lodged, likewise peruse the final *rubakari* filed in the case by the Board of Revenue or other authority exercising the powers of that Board; and, if on a consideration of those documents the decision of the Court should appear unjust or erroneous or doubtful, or its proceedings in the case manifestly irregular or imperfect, or if, from the nature of the cause, as stated in the decree or otherwise, it shall appear to them of sufficient importance to merit a further investigation in appeal, they shall admit ²[an appeal].

Procedure on such appeals.

27. [Stamped paper and fees.] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

28. *First.*—On the production of any written document purporting to be a *farman* of any King of Delhi, or to be a *sanad*, *parwana* or other grant of any *Wazir*, or of any *Nawab*, *Raja* or other potentate or person formerly exercising authority in any part of the Provinces and territories now subject to the British Government, it shall be the duty of the Revenue and Judicial Authorities before whom such document may be produced to ascertain the validity and authenticity of it, by reference to such offices and records, and by the examination of such living witnesses, as may be likely to lead to the due appreciation thereof; and the said authorities shall not receive such document in evidence merely on the credit of the seal, or other attestations impressed upon it, without some external evidence in corroboration of its authenticity.

Validity of *farmans*, *sanads* or grants to be carefully ascertained.

Second.—Provided also that no document of the above description which may be produced to any Court or *Adalat* shall be received, nor any proceedings held thereon, nor any faith given thereto, unless it shall be proved that the said document has been duly registered under the rules and requisitions of Regulations XIX³ and XXXVII⁴, 1793, ⁵[*XLI and XLII, 1795*], VIII,

Such deeds not to be received unless registered.

¹Words repealed by the Repealing Act 1874 (XVI of 1874), are omitted.

²The original words were "a special appeal." The word "special" was repealed by the Repealing Act, 1874 (XVI of 1874), and the words "an appeal" were substituted by the Amending Act, 1891 (XII of 1891).

³The Bengal Revenue-free Lands (Non-Badshahi grants) Regulation, 1793.

⁴The Bengal Revenue-free Land (Badshahi Grants) Regulation, 1793.

⁵Ben. Regs. XLI and XLII of 1795 and XXXI and XXXVI of 1803, were repealed (except in certain areas) by the N.-W. Provinces Land-revenue Act, 1873 (XIX of 1873).

(Secs. 29-31.)

1800,¹ [XXXI and XXXVI, 1803², and VII, 1808³]; or unless due cause be shown for the non-registry.

29. [Regulation applied to cases in which Collector suspects validity of original tenures of land, subsequently commuted for money-pensions.] Rep. by the Amending Act, 1891 (XII of 1891).

30. [Trial by Collectors of resumption and other suits.] Rep. by the Bengal Land-revenue Resumption Act, 1862 (Ben. Act VII of 1862).

31. *First.*—Nothing in the present Regulation shall be considered to affect the right of the proprietors of estates for which a permanent settlement has been concluded to the full benefit of all waste-lands included within the ascertained boundaries of such estates respectively at the period of the decennial settlement, and which have since been or may hereafter be reduced to cultivation. The exclusive advantages resulting from the improvement of all such lands were guaranteed to the proprietors by the conditions of that settlement, and it being left to the Courts of Judicature to decide on all contested cases whether lands assessed under the provisions of this Regulation were included at the period of the decennial settlement within the limits of estates for which a settlement has been concluded in perpetuity, and to reverse the decision of the Revenue-authorities in any case in which it shall appear that lands which actually formed, at the period in question, a component part of such an estate, have been unjustly subjected to assessment under the provisions of this Regulation, the *zamindars* and other proprietors of land will be enabled, by an application to the Courts, to obtain immediate redress in any case in which the Revenue-authorities shall violate or encroach on the rights secured to them by the permanent settlement.

Second.—It is further hereby declared and enacted that all claims by the Revenue-authorities on behalf of [the Crown] to additional revenue from lands which were at the period of the decennial settlement included within the limits of estates for which a permanent settlement has been concluded, whether on the plea of error or fraud, or on any pretext whatever, saving, of course, the case of lands expressly excluded from the operation of the settlement, such as *lakhiraj* and *thanadari* lands, shall be and be considered wholly illegal and invalid.

Regulation
not to affect
right of
proprietors to
waste-land
guaranteed at
permanent
settlement.

Nor to
warrant claim
to additional
revenue from
lands
permanently
assessed on
plea of error
or fraud.
Exception.

¹The Bengal Revenue-free Lands Regulation, 1800.

²Ben. Regs. XXXI and XXXVI of 1803 were repealed (except in certain areas) by the N.-W. Provinces Land-revenue Act, 1873 (XIX of 1873).

³Ben. Reg. VII of 1808 was repealed by Act XXIX of 1871.

⁴These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Regulation VIII of 1819.

(The Bengal Patni Taluks Regulation, 1819).¹

(3rd September 1819.)

A Regulation to declare the validity of certain tenures, and to define the relative rights of zamindars and patni talukdars; also to establish a process for the sale of such taluks in satisfaction of the zamindar's demand of rent * * *.

1. By the rules of the perpetual settlement proprietors of estates paying revenue to Government, that is, the individuals answerable to Government for the revenue then assessed on the different *maháls*, were declared to be entitled to make any arrangements for the leasing of their lands in *taluk* or otherwise, that they might deem most conducive to their interests. Preamble.

By the rules of Regulation XLIV, 1793,³ however, all such arrangements were subjected to two limitations; first, that the *jama* or rent should not be fixed for a period exceeding ten years; and, secondly, that in case of a sale for Government arrears, such leases or arrangements should stand cancelled from the day of sale.

The provisions of section 2, Regulation XLIV, 1793,³ by which the period of all fixed engagements for rent was limited to ten years, have been rescinded by section 2, Regulation V, 1812,⁴ and in Regulation XVIII⁵ of the same year, it is more distinctly declared that *zamindars* are at liberty to grant *taluks* or other leases of their lands, fixing the rent in perpetuity at their discretion, subject, however, to the liability of being dissolved on sale of the grantor's estate for arrears of the Government revenue in the same manner as heretofore.

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation extends to the whole of the former Province of Bengal—see the concluding paragraph of s. 1.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4 (2).

³Words repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁴Reg. XLIV of 1793 was repealed by Act XXIX of 1871.

⁵The Bengal Land-revenue Sales Regulation, 1812.

⁶The Bengal Leases and Land-revenue Regulation, 1812.

(Sec. 1.)

In practice, the grant of *taluks* and other leases at a rent fixed in perpetuity had been common with the *zamindars* of Bengal for some time before the passing of the two Regulations last mentioned, but, notwithstanding the abrogation of the rule which declared such arrangements null and void, and the abandonment of all intention or desire to have it enforced as a security to the Government revenue in the manner originally contemplated, it was omitted to declare in the rules of Regulations V¹ and XVIII² of 1812, or in any other Regulations, whether tenures at the time in existence and held under covenants or engagements entered into by the parties in violation of the rule of section 2, Regulation XLIV, 1793,³ should, if called in question, be deemed invalid and void as heretofore.

This point it has been deemed necessary to set at rest by a general declaration of the validity of any tenures that may be now in existence, notwithstanding that they may have been granted at a rent fixed in perpetuity, or for a longer term than ten years, while the rule fixing this limitation to the term of all such engagements, and declaring null and void any granted in contravention thereto, was in force.

Furthermore, in the exercise of the privilege thus conceded to *zamindars* under direct engagements with Government, there has been created a tenure which had its origin on the estates of the *Rājā* of Burdwan, but has since been extended to other *zamindaris*; the character of which tenure is that it is a *taluk* created by the *zamindar*, to be held at a rent fixed in perpetuity by the lessee and his heirs for ever; the tenant is called upon to furnish collateral security for the rent, and for his conduct generally, or he is excused from this obligation at the *zamindar's* discretion; but even if the original tenant be excused, still, in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the *zamindar*.

By the terms also of the engagements interchanged, it is amongst other stipulations provided that, in case of an arrear occurring, the tenure may be brought to sale by the *zamindar*, and, if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand.

¹The Bengal Land-revenue Sales Regulation, 1812.

²The Bengal Leases and Land-revenue Regulation, 1812.

³Ben. Reg. XLIV of 1793 was repealed by Act XXIX of 1871.

of 1819.]

(Sec. 1.)

These tenures have usually been denominated *patni taluks*, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons, who on taking such leases went by the name of *darpatni talukdars*: these again sometimes similarly underlet to *sepatnidars*; and the conditions of all the title-deeds vary in nothing material from the original engagements executed by the first holder.

In these engagements, however, it is not stipulated whether the sale thus reserved to himself by the grantor is for his own benefit, or for that of the tenant; that is, whether, in case the proceeds of sale should exceed the *zamindar's* demand of rent, the tenant would be entitled to such excess; neither is the manner of sale specified, nor do the usages of the country nor the Regulations of Government afford any distinct rules by the application of which to the specific cases the defects above alluded to could be supplied or the points of doubt and difficulty involved in the omission be brought to determination in a consistent and uniform manner.

The tenures in question have extended through several *zilas* of Bengal, and the mischiefs which have arisen from the want of a consistent rule of action for the guidance of the Courts of Civil Judicature in regard to them have been productive of such confusion as to demand the interference of the legislature: it has accordingly been deemed necessary to regulate and define the nature of the property given and acquired on the creation of a *patni taluk* as above described, also to declare the legality of the practice of under-letting in the manner in which it has been exercised by *patnidars* and others, establishing at the same time such provisions as have appeared calculated to protect the under-lessee from any collusion of his immediate superior with the *zamindar* or other, for his ruin, as well as to secure the just rights of the *zamindar* on the sale of any tenure under the stipulations of the original engagements entered into with him.

It has further been deemed indispensable to fix the process by which the said tenures are to be brought to sale, and the form and manner of conducting such sale; and

whereas the estates of *zamindars* under engagements with Government are liable to be brought to sale at any time for an arrear in the revenue payable by monthly *kists* to Government, it has seemed just to allow any *zamindar* who may have granted tenure with a stipulation of the right to sell for arrears, the opportunity of availing himself of this means of realizing his dues in the middle of

(Sec. 2.)

the year, as well as at the close, instead of only at the end of the Bengal year,¹ as heretofore allowed by the Regulations in force; it has further been deemed equitable to extend this rule to all cases in which the right of sale may have been reserved, even though, in conformity with the Regulations heretofore in force, the stipulation for sale contained in the engagements interchanged may have restricted such sale to the case of a demand for rent remaining unpaid at the close of the Bengal year.¹

The following rules have accordingly been enacted by His Excellency the Most Noble the Governor General in Council, to take effect from the date of their promulgation throughout the several districts of the Province of Bengal, including Midnapore.

Leases fixing rent in perpetuity or for more than ten years, valid, though executed while section 2, Regulation XLIV, 1793, was in force.

2. It is hereby declared that any leases or engagements for the fixing of rent now in existence that may have been granted or concluded for a term of years or in perpetuity by a proprietor under engagements with ³[the Crown], or other person competent to grant the same, shall be deemed good and valid tenures, according to the terms of the covenants or engagements interchanged notwithstanding that the same may have been executed before the passing of Regulation V, 1812,⁴ and while the rule of section 2, Regulation XLIV, 1793,⁵ which limited the period for which it was lawful to grant such engagements to ten years, and declared all that might be entered into for a longer term to be null and void, was in full force and effect; and notwithstanding that the stipulations of the said leases may be in violation of the rule in question:

Provided, however, that nothing herein contained shall be held to exempt any tenures held under engagements from proprietors of estates paying revenue to ³[the Crown] from the liability to be cancelled on sale of

¹i.e., the month of *Chaitra*, which corresponds with the last part of March and the first part of April.

²The words "It has been likewise deemed advisable to explain and modify some of the existing rules for the collection of rents, with a view to render them more efficacious than at present, as well as to provide against sundry means of evasion now resorted to by defaulters," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The Bengal Land-revenue Sales Regulation, 1812.

⁵Ben. Reg. XLIV of 1793 was repealed by Act XXIX of 1871.

of 1819.]

(Secs. 3, 4.)

the said estates for arrears of the said revenue, * * * unless especially exempted from such liability by the rule in question, or by any other specific rule of the Regulations in force.

3. *First*.—The tenures known by the name of *patni taluks*, as described in the preamble to this Regulation, shall be deemed to be valid tenures in perpetuity, according to the terms of the engagements under which they are held. They are heritable by their conditions; and it is hereby further declared that they are capable of being transferred by sale, gift or otherwise, at the discretion of the holder, as well as answerable for his personal debts, and subject to the process of the Courts of

Patni tenures declared valid, transferable and answerable for debt.

VOLUME I.

Page 189.—After clause *Third* of section 3 add the following clause:—

Patni's t of r-letting.

“*Fourth*. Subject to the provision of section 14A of this Regulation, an arrear of rent shall, notwithstanding anything contained in any other section of this Regulation or in any engagement between the *zamindar* and the *talukdar* whether entered into, before or after the commencement of the Bengal *Patni Taluks Regulation* (Amendment) Act, 1941, bear simple interest at the rate of six and a quarter *per centum per annum* from the expiration of that quarter of the agricultural year in which the instalment falls due to the date of payment or of sale of the tenure under this Regulation or of the institution of a suit for arrears of rent, whichever is earlier.

tenure dable ars.

Explanation.—The term ‘agricultural year’ has the same meaning as in clause (1) of section 3 of the Bengal Tenancy Act, 1885.”

VIII of 1885.

(Added by Ben. Act X of 1941, section 2.)

[No. 17, dated the 1st December, 1941.]

to this Regulation, the holder of such a tenure shall be deemed to have acquired all the rights and immunities declared in the preceding section to attach to *patni taluks*, in so far as concerns the grantor of such under-tenure.

nilar title-deeds confer similar interest to that provided for *patni taluks* in section 3.

¹The words and figures “under the rule of section 5, Regulation XLIV of 1793,” which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words and figures “under the rule contained in the seventh clause of section 15, Regulation 7, 1799, for leases conveying a limited interest in the land,” were repealed, *ibid*.

(Secs. 5, 6.)

VOLUME I.

held in the case of

Page 190—

In section 5 after the last paragraph insert the following proviso:—

Ben Act
XV of
1940.

“Provided that, notwithstanding anything contained in this Regulation, the provisions relating to security shall not, after the commencement of the Bengal Patni Taluks Regulation (Amendment) Act, 1940, apply to the transfer of a *patni taluk* or a share or a portion thereof.”

(Inserted by Ben. Act XV of 1940, section 2.)

[No. 8, dated the 11th November 1940.]

to one hundred rupees, which sum shall be the amount of any fee to be exacted on this account.

and security.

The *zamindar* shall also be entitled to demand substantial security from the transferee or purchaser, to the amount of half the *jama* or yearly rent payable to him from the tenure transferred; the condition of furnishing such security on requisition being understood to be one of the original liabilities of the tenure.

The above rules shall apply equally to the case of a sale made in execution of a decree or judgment of Court, as to all other alienations, but it shall not apply to the case of sale for an arrear in the rent due to the *zamindar* or other superior, under the rules hereinafter contained.

The purchaser at such a sale shall be entitled to have his name registered and to obtain possession without fee, though of course liable to be called on to give security under the conditions of the tenure purchased.

Zamindar
may refuse
sanction to
transfer till
fee and
security
tendered.

6. It shall be competent to the *zamindar* or other superior to refuse the registry of any transfer until the fee above stipulated be paid, and until substantial security to the amount specified be tendered and accepted:

Provided, however, that if the security tendered by any purchaser or transferee should not be approved by the *zamindar*, it shall be dis-

Pages 190-191—

In section 6 for the words commencing with “It is hereby provided” and ending with “his special sanction” substitute the following:—

“It is hereby provided that the rules of section 5 relating to fee for alienation shall be held to apply to transfers of any fractional portion of or the entire interest in, a *patni taluk*.”

competent to motion in the city, if satisfied, shall issue an and give effect

this and of the ply to transfers uk, nor to any

(Substituted by Ben. Act XV of 1940, section 3.)

[No. 8, dated the 11th November 1940.]

After section 6 insert the following sections:—

“6A. (1) If a person who holds a share or a portion of a *patni taluk* desires to pay his share of the rent to the *zamindar* separately, he may submit to the Collector a written application to that effect containing such particulars as may be prescribed by rules made by the Provincial Government in this behalf. Separate accounts.

The Collector shall then cause a copy of such application to be served or published in such manner as may be prescribed by rules made by the Provincial Government.

(2) In the event of no objection being received by the Collector from any co-sharer of the applicant or from the *zamindar* or any of his co-sharers within six weeks from the time of service or publication of the copy of application under sub-section (1) whichever is later, the Collector shall direct the *zamindar* or *zamindars* to open a separate account in the name of the applicant to which all payments made by him shall be credited separately to his share. The date on which the Collector directs the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

(3) If any of the co-sharers of the applicant or the *zamindar* or any of his co-sharers object that the applicant has no right to the share claimed by him, or that his interest in the *patni taluk* is less or other than that claimed by him, or if the application be in respect of a specific portion of the land of a *taluk*, that the amount of rent stated by the applicant to have been heretofore paid on account of such portion of land is not the amount which has been recognized by the other sharers as the rent thereof, the Collector shall refer the parties to the civil court and shall suspend proceedings until the question at issue is judicially determined.

(4) (a) W/L

Page 191—

Strike out section 7 and insert the following note:—

(Repealed by Ben. Act XV of 1940, section 5.)

[No. 8, dated the 11th November 1940.]

If the *taluk* shall become liable for sale for arrears of rent, only that share or portion of such *taluk* shall be put up for sale in respect of which the arrear of rent may be due.

(5) In the advertisement of sale, notice of intention to exclude the share or portion of the *patni taluk* from which no arrear of rent is due shall be given. The share or portion of the *taluk* sold, together with the

(Sec. 8.)

tenures held under engagements stipulating merely for a sale at the end of the year, in conformity with the practice heretofore allowed by the Regulations in force.

First sale to be applied for on first of *Baisakh*.

Second.—On the first day of *Baisakh*,¹ that is, at the commencement of the following year from that of which the rent is due, the *zamindar* shall present a petition * * * to the Collector, containing a specification of any balances that may be due to him on account of the expired year, from all or any *talukdars* or other holders of an interest of the nature described in the preceding clause of this section.

The same shall then be stuck up in some conspicuous part of the *cutcherry* with a notice that, if the amount claimed be not paid before the first of *Jeth*² following, the tenures of the defaulters will on that day be sold by public sale in liquidation.

Should, however, the first of *Jeth*³ fall on a Sunday or holiday, the next subsequent day, not a holiday, shall be selected instead; a similar notice shall be stuck up at the *sadar cutcherry* of the *zamindar* himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent to be similarly published at the *cutcherry* or at the principal town or village upon the land of the defaulter.

The *zamindar* shall be exclusively answerable for the observance of the forms above prescribed, and the notice required to be sent into the *mufassal* shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager, for the same, or, in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot.

If it shall appear from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the fifteenth of the month of *Baisakh*¹ it shall be sufficient warrant for the sale to proceed upon the day appointed.

In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the *cutcherry* of the nearest *munsif*, or if

¹The month of *Baisakh* corresponds with the last part of April and the first part of May.

²The words "to the Civil Court of the district, and a similar one," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The month of *Jeth* corresponds with the last part of May and the first part of June.

Page 183—

In section 8, at the end of clause *second* insert the following:—

“The *zamindar* shall also send by registered post to all defaulters a copy of, or an extract from, the notice containing a specification of any balances that may be due to him on account of the rent of the expired year and other particulars mentioned in this section.”

[Inserted by Ben. Act XV of 1940, section 6 (a).]

[No. 8, dated the 11th November 1940.]

Page 183—

In section 8, at the end of clause *third* add the following:—

“The *zamindar* shall send by registered post to all

Page 183—

In section 8, after clause *third* add the following clauses:—

“*Fourth.* Where the *zamindar* is satisfied that there is reason to believe that the defaulter is keeping out of the way for the purpose of avoiding service of a notice or document under this section or that for any other reason the notice or document cannot be served in the ordinary way, he may cause it to be served by affixing the same in some conspicuous part of the house (if any) in which the defaulter is known to have last resided or carried on business or personally worked for gain.

how
lucted.

Service by the abovementioned method shall be as effectual as if it had been made on the defaulter personally.

Fifth. The name and address given in a notice of succession or transfer of a *patni taluk* or a share or a portion thereof under section 17A shall be presumed to be the correct name and address of the person succeeding to, or transferee of such *taluk* until fresh notice under that section has been given on a subsequent date or until a change of the address has been notified to the *zamindar* by registered post not later than 1st day of *Chaitra* or the 1st day of *Aswin* immediately preceding the date of sale fixed under this section.”

[Added by Ben. Act XV of 1940, section 6 (c).]

[No. 8, dated the 11th November 1940.]

and the first part of October.

²The month of *Aghan* corresponds with the last part of November and the first part of December.

⁴The words “by the Register or acting Register of the Civil Court, or, in his absence, by the person in charge of the office of Judge or of Magistrate of the district within which the lands may be situated,” which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁵These words were substituted for the words “notes of the Bank of Bengal” by the Amending Act, 1903 (1 of 1903).

(Sec. 10.)

equivalent amount in Government securities be not lodged, the lot shall be re-sold on the same day, and, if the remainder of the purchase-money be not paid by noon of the eighth day, notice shall be given of re-sale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the *bazar* of the *sadar* station of the *zila*, after which the lot shall be re-sold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen *per cent.* already made,¹ * * and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one; such deficiency to be levied by the process for the execution of decrees of the Civil Courts.

Forms to be
observed in
selling.

10. At the time of the sale the notice previously stuck up in the *cutcherry* shall be taken down, and the lots be called up successively in the order in which they may be found in that notice.

A person shall attend on the part of the *zamindar*, with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, together with the receipt for, or certificate of, the notice directed to be published in the *mufassal*, nor shall any lot be put up to sale until the statement produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read; the observance of which forms shall be recorded in a separate *rubakari* to be held upon each lot sold.

If the sale be of the description provided for in the third clause of section 8 of this Regulation, the *kist-bandi* of the defaulter shall likewise be produced, in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale; nor shall the sale take place unless this be ascertained.

The *zamindar* shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the public officer making the sale be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Regulation.

¹The words "(which shall be in such case regarded as part of the proceeds of the sale)," which were repealed by the Forfeited Deposits Act, 1850 (XXV of 1850), are omitted.

of 1819.]

(Secs. 11, 12.)

11. First.—It is hereby declared that any *taluk* or saleable tenure that may be disposed of at a public sale, under the rules of this Regulation, for arrears of rent due on account of it, is sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by a stipulation to that effect in the written engagements under which the said *taluk* may have been held.

Tenure to be sold free of incumbrance by act of defaulter.

No transfer by sale, gift or otherwise, no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the *zamindar* to hold the tenure of his creation answerable, in the state in which he created it for the rent, which is in fact his reserved property in the tenure, except the transfer or assignment should have been made with a condition to that effect, under express authority obtained from such *zamindar*.

Second.—In like manner, on sale of a *taluk* for arrears, all leases originating with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled, except the authority to grant them should have been specially transferred; the possessors of such interests must consequently lose the right to hold possession of the land and to collect the rents of the *raiyyats*; this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent.

No under-lease to stand after sale.

Third.—Provided, nevertheless, that nothing herein contained shall be construed to entitle the purchaser of a *taluk* or other saleable tenure intermediate between the *zamindar* and actual cultivators to eject a *khudkast raiyat* or resident and hereditary cultivator, nor to cancel *bona fide* engagements made with such tenants by the late incumbent or his representative, except it be proved in regular suit, to be brought by such purchaser for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor.

Exception in favour of *bona fide* engagements with *raiyyats*.

12. The rules of the preceding section, being declaratory of the principle to be observed on all occasions wherein saleable tenures are made responsible for the *zamindar's* reserved rent, will equally apply to the case of *taluks*, heretofore sold, as to those that may be sold henceforward, if the sale shall have been fair,

Above rule to take effect retrospectively.

(Sec. 13.)

and the process observed in conducting it shall have been that recognised and in use in the district at the time of selling.

Proviso.

Nothing, however, herein contained shall operate to the prejudice of any agreement, express or implied, now subsisting between the purchaser of a *taluk* and the lessees of his predecessor.

Rules not to apply to private transfers.

Neither shall the rule for the fall of under-tenures be considered to apply to any private transfer by a *talukdár* of his own interest, nor to a public sale in execution of a decree, nor to the case of a relinquishment by the *talukdár* in favour of the *zamindar*, nor to any act originating with the former holder, other than default as aforesaid: all such operations involve only a transfer of the tenure in the state in which it may be held at the time, and the new incumbent succeeds to no more than the reserved rights of the former tenant, such as they may be, and is of course subject to any restriction put upon the tenure by his act.

Reason for—**VOLUME I.**

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Page 196—

In clause *First* of section 13 in line 4, for “or” read “of”.
[No. 1, dated the 15th September, 1939.]

How under-tenants may stay sale.

Second.—Whenever the tenure of a *talukdár* of the first degree may be advertised for sale in the manner required by the second and third clauses of section 8 of this Regulation, for arrears of rent due to the *zamindar*, the *talukdárs* of the second degree, or any number of them, shall be entitled to stay the final sale, by paying into Court the amount of balance that may be declared due by the person attending on the part of the *zamindar* on the day appointed for sale; in like manner they shall be entitled to lodge money antecedently, for the purpose of eventually answering any demand that may remain due on the day fixed for the sale, and, should the amount lodged be sufficient, the sale shall not proceed, but, after making good to the *zamindar* the amount of his demand, any excess shall be paid back to the person or persons who may have lodged it.

of 1819.]

(Sec. 14.)

Third.—If the amount so lodged shall be rent due by the inferior *talukdār* to the holder of the advertised tenure, the same shall be stated at the time of making the deposit, and the amount shall be carried to the account of the tenant or tenants lodging it, and be deducted from any claim of rent that may at the time

Procedure in case of amount lodged being rent due from under-tenant;

Page 197—

After section 13 add the following clauses:—

“*Fifth.* When any person whose interests are affected by the sale of a *patni taluk* or a share or a portion thereof advertised for sale under this Regulation pays to the Collector the amount requisite to prevent the sale—

d in case amount lodged being advance on private ids.

(a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve *per centum per annum* and secured by a mortgage of the *taluk* or a share or a portion thereof to him;

(b) his mortgage shall take priority of every other charge on the *taluk* or a share or a portion thereof other than a charge for arrears of rent; and

(c) he shall be entitled to possession of the *taluk* or a share or a portion thereof as mortgagee of the *talukdar*, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

Nothing in this clause shall affect any other remedy to which any such person would be entitled.

Sixth. When a *patni taluk* or a share or a portion thereof is advertised for sale under this Regulation, for arrears of rent owing to the default of a superior *talukdar*, and an inferior *talukdar* pays money to the Collector in order to prevent the sale such inferior *talukdar* may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.”

(Added by Ben. Act XV of 1940, section 7.)

[No. 8, dated the 11th November 1940.]

manner provided for in sections 9 and 10 of this Regulation; nor shall it be stayed or postponed on any account, unless the amount of the demand be lodged.

e not to stayed ess arrears med be ged.

It shall, however, be competent to any party desirous of contesting the right of the *zamindar* to make the sale, whether on the ground of there having

But suit to lie for its reversal.

In section 14, *after* the last paragraph of clause *first* add the following proviso:—

“Provided that, notwithstanding anything contained in this Regulation the right of the *zamindar* to make the sale shall not be stopped by any party, nor shall the sale be reversed solely, on the ground that a notice sue or other document mentioned in section 8 was not served personally on the defaulters or any of them.”

[Added by Ben. Act XV of 1940, section 8 (a).]

[No. 8, dated the 11th November 1940.]

its, upon notice passing for reversal of the sale, the Court shall be careful to indemnify him against all loss, at the charge of the *zamindar* or person at whose suit the sale may have been made.

Defaulters may apply for summary investigation clause:— In section 14, *after* clause *second* add the following

“Third. Any *talukdar* shall be entitled to stay the sale of his *patni taluk* or of a share or a portion thereof before the sale of such *taluk*, share or portion actually takes place by paying to the officer conducting the sale the amount of arrears of rent for which it was advertised for sale.”

[Added by Ben. Act XV of 1940, section 8 (b).]

[No. 8, dated the 11th November 1940.]

its, in its turn, notwithstanding the suit; and, if the *zamindar* or his agent in attendance insist on the demand, the sale shall be made on his responsibility, nor shall it be stayed, or the summary suit be allowed to proceed, unless the amount claimed be lodged in cash, or in Government securities, or in ¹[currency notes], by the *talukdar* contesting the demand; and if such deposit be not made, the alleged defaulter will have no remedy but by a regular action for damages and for a reversal of the sale ²[unless he makes an application under section 14A].

Sale not to be stayed unless amount claimed is deposited.

Procedure for setting aside sale.

³14A. *First*.—It shall be competent to a defaulting *patnidar* of a *patni taluk* or a defaulting holder of a tenure sold under this Regulation or to a *talukdar* or tenure-holder of the second degree of such *taluk* or tenure or to a person holding an interest in such *taluk* or tenure in virtue of a title acquired before the sale of the *taluk* or tenure or to a person having a mortgage on such *taluk* or tenure to apply to the Collector to have the sale set aside on the applicant depositing

¹These words were substituted for the words “notes of the Bank of Bengal” by the Amending Act, 1903 (1 of 1903).

²These words were added by s. 2 of the Bengal Patni Taluks Regulation (Amendment) Act, 1933 (Ben. Act IV of 1933).

³Section 14A was inserted by s. 3, *ibid*.

of 1819.]

(Sec. 14A.)

with the Collector within thirty days from the date of sale, or, if the *taluk* or tenure has been resold, within thirty days from the date of the original sale—

- (a) a sum of money equal to one *per cent.* of the purchase money, for payment to ¹[the Provincial Government]

Page 199—

In section 14A, in paragraph (b) of the *first* clause after the words “together with interest” insert the words “up to the date of deposit”.

[Inserted by Ben. Act XV of 1940, section 9 (a).]

[No. 8, dated the 11th November 1940.]

On receipt of an application to set aside the sale the Collector shall serve a notice on the *zamindar* and the auction purchaser fixing a date for hearing the same.

Second.—No application shall be entertained under this section if the applicant has instituted a suit in the Civil Court to set aside the sale unless he first withdraws such suit.

Third.—No application shall be allowed under this section without the consent of the *zamindar* if the defaulting *talukdar* or tenure-holder is liable or has agreed to pay on behalf of the *zamindar* any revenue or cess due to ¹[the Provincial Government] from the *zamindar* and such revenue or cess has not been paid to ¹[the Provincial Government] or deposited in Court before the date fixed for the hearing of the application.

Fourth.—If no objection is made by the *zamindar* or the auction purchaser on the date fixed for the hearing of the application or on any subsequent date to which the hearing may be adjourned and the deposit required by the first clause of this section has been made within thirty days from the date of the sale, the Collector shall allow the application and make an order setting aside the sale, and shall pass orders for the disposal of the money deposited by the applicant and the refund of the purchase money.

Fifth.—If any objection is made by the *zamindar* or auction purchaser the Collector shall refer the application together with the objection to the nearest Civil Court having jurisdiction and such Civil Court shall

¹These words were substituted for the word “Government” by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937..

(Sec. 15.)

decide whether the applicant is entitled under this section to have the sale set aside, and shall either dismiss the application or make an order setting aside the sale, and shall pass such further orders regarding the disposal of the money deposited by the applicant, the refund of the purchase money, the payment of costs or any other matter arising out of the application as it thinks fit.

The Civil Court may, at its discretion, make suitable arrangements for protection of the *taluk* or tenure but the *patnidár* or tenure-holder shall be allowed to remain in possession if he pays to the Court in advance six months' rent payable by him for such *patni* or tenure or gives security for one year's rent to the satisfaction of the Court. If such payment is not made or security is not given the Court may appoint a receiver for the *patni* or tenure.

Sixth.—The Civil Court may direct that any sum in deposit with the Collector under the first or third clause of this section shall be invested pending decision of the application by the Civil Court and thereupon the Collector shall remit the said sum to the Civil Court for investment.

Page 200—

In section 14A, after seventh clause insert the following clause:—

“*Eighth.* The provisions of this section shall apply to the setting aside of the sale of a share or portion of a *patni taluk* whenever a separate account shall have been ordered to be opened in respect of such share or portion under section 6A.”

[Inserted by Ben. Act XV of 1940, section 9 (b).]

[No. 8, dated the 11th November 1940.]

amendment.

Delivery of
possession to
purchaser.

15. *First.*—²[On the the expiry of thirty days from the date of any sale made under this Regulation, or if there has been a resale within thirty days of the original sale if the entire amount of the purchase money has

¹These words were substituted for the word “Government” by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for certain words by s. 4 of the Bengal Patni Taluks Regulation (Amendment) Act, 1933 (Ben. Act IV of 1933).

of 1819.]

(Sec. 15.)

been paid by the purchaser, and if no application under section 14A to set aside the sale is pending], such purchaser shall receive from the officers conducting the sale a certificate of such payment.

The purchaser shall then proceed with the certificate in question to procure a transfer to his name in the *cutcherry* of the *zamindar*, and upon furnishing security, if required, to the extent of half the *jama* or annual rent, he shall receive the usual "*amaldustauk*" or order for possession, together with the notice to the *raiyats* and others to attend and pay their rents henceforward to him.

The *zamindar* shall also be bound to furnish access to any papers connected with the tenure purchased that may be forthcoming in his *cutcherry*; and should he in any manner delay the transfer in his office, or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished or tendered on requisition, the new purchaser shall be entitled to apply direct to the Court, and he shall receive the orders for possession, and shall be put in possession, of the lands by means of the *nazir*, in the same manner as possession is obtained under a decree of Court:

Provided, however, that, if the delay be on account of the *zamindar's* contesting the sufficiency of the security tendered, the rule contained in section 6 of this Regulation shall be observed.

Second.—When the new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent himself, or the holders of tenures or assignments derived from the late incumbent, and intermediate between him and the actual cultivators, shall attempt to offer opposition, or to interfere with the collections of the new purchaser, from the lands composing his purchase, the latter shall be at liberty to apply immediately to the Civil Court for the aid of the public officers in obtaining possession of his just rights.

Procedure in
case of
opposition to
purchaser.

A proclamation shall then issue under the seal of the Court and signature of the Judge declaring that the new incumbent having, by purchase at a sale for arrears of rent due to the *zamindar*, acquired the entire rights and privileges attaching to the tenure of the late *talukdár*, in the state in which it was originally derived by him from the *zamindar*, he alone will be recognised as entitled to make the *zamindari collections* in the

(Secs. 16, 17.)

mufassal, and no payments made to any other individual will on any account be credited to the *rai-yats* or others in any ¹* suit for rent ²* * * or on any other occasion whatever when the same may be pleaded.

Procedure in
case of
continued
opposition.

Third.—Should the late incumbent or his late under-tenants continue to oppose the entry of the new purchaser, notwithstanding the issuing of such a proclamation, or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the police-officers and of all other public officers who may be at hand and capable of affording assistance shall be given to the new purchaser, on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.

16. [*Sale of under-tenures for arcrars.*] *Rep. by the Bengal Rent Recovery (Under-tenures) Act, 1865 (Ben. Act VIII of 1865).*

Disposal of
proceeds of
sales.

17. *First.*—The following rules have been enacted for the disposal of the proceeds of any sale made under the rules of this Regulation.

Deduction
on account of
Provincial
Government.

Second.—One *per cent.* shall first be deducted from the net proceeds realised, and shall be carried to the account of ³[the Provincial Government], for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for carrying into effect the provisions of this Regulation.

Payment to
zamindars.

Third.—The balance on account of which the sale
may have been made shall be paid to the
full
the
om

Page 203—

At the end of clause *third* of section 17 insert the following paragraph:—

“The Provincial Government may prescribe by rules the amount of charges incurred by the *zamindar* in bringing a *taluk* to sale under this Regulation.”

(Inserted by Ben. Act XV of 1940, section 10.)

[*No. 8, dated the 11th November 1940.*]

¹⁰¹² (Act I of 1874), is omitted.

²The words and figures “brought under the provisions of section 15, Regulation 7, 1799, or in any application to stay process by distraint, under the rules of Regulations 5, 1812,” were repealed, *ibid.*

³These words were substituted for the word “Government” by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1819.]

(Sec. 17.)

the time, will have become in fact mere personal debts of the individual *talukdár*, and must be recovered in the same way as other debts by a regular suit in the Court.

Fourth.—Any excess that may remain after satisfying the demand of the *zamindar*, in the manner above described, shall be forthwith sent by the officer conducting the sale to the treasury of the Collector or Assistant Collector of the district, to be there held in deposit to answer the claims of the *talukdárs* of the second degree, or of others, who, by assignments of the defaulter, may be at the time in possession of a valuable interest on the land composing the *taluk* sold, or on any part of it.

Disposal of remainder.

Fifth.—It shall be competent to any one conceiving himself to possess such an interest to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit at any time within two months from the date of sale.

Under-tenants free to prosecute for price of their interest or compensation.

If the Court shall, on investigation, consider the plaintiff's claim to be an equitable one, the Court will award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances.

If there be more claimants than one, payment shall not be made from the deposit until the whole of the claims be settled; and, in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realised from him by the usual process for the execution of decrees.

Sixth.—Provided, however, that no *talukdár* of the second degree or other possessor of an assigned interest upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such tenure or assignment upon its becoming cancelled by sale of the superior *taluk*, except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose prior to the date of sale.

Suit not to lie if under-tenant be himself in arrear at time of sale.

Seventh.—Should no claims upon the purchase-money of a *taluk* sold as above be brought forward by any under-tenants or assignees within the period of two months from the date of sale, or should the amount

When defaulter to receive excess unclaimed.

After section 17 insert the following section:—

Ben. Act
XV of
1940.

“17A. When succession to or transfer by sale, gift or otherwise of a *patni taluk* takes place, or in case of such succession or transfer taking place before the commencement of the Bengal Patni Taluks Regulation (Amendment) Act, 1940, within one year from the date of such commencement, the person succeeding or the transferee, as the case may be, shall give notice of the succession or transfer and of his name and address to the Collector in such form, as may be prescribed by the Provincial Government.

Registration
of names of
successors to,
and transferes
of, *patni taluk*

He shall also pay to the Collector such fee for the service of the notice on the *zamindar* as may be specified by the Provincial Government.

The Collector shall cause the notice to be served on the *zamindar* named in the notice or his common agent, if any, in such manner as may be prescribed by rules to be made by the Provincial Government:

Provided that, where at the instance of the person succeeding, mutation is made in the rent-roll of the *zamindar* within six months of the succession, the person succeeding shall not be required to give notice under this section.

Subst
of P
Gove
secur
cash
depo

A person becoming entitled to a *patni taluk* by succession or by transfer shall not be entitled to receive by registered post the notices referred to in clauses *second* and *third* of section 8, unless the duties imposed upon him by this section have been performed.

In this section the words ‘person succeeding’, ‘transferee’, ‘purchaser’ and ‘the person becoming entitled to a *patni taluk* by succession or by transfer’ include the successors in interest of such persons, but do not include the *zamindar* where he is the sole *zamindar*.

This section shall apply to the transfer or succession to a share or a portion in a *patni taluk*.”

(Inserted by Ben. Act XV of 1940, section 11.)

[No. 8, dated the 11th November 1940.]

¹Clause *Eighth* was re-numbered as paragraph (1) of clause *Eighth* by s. 2 of the Bengal Patni Taluks Regulation (Amendment) Act, 1936 (Ben. Act XVII of 1936).

²See foot-note 3 on p. 202, *ante*.

³The words “as shown by the Government Gazette last received” which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁴Paragraph (2) was added by s. 2 of the Bengal Patni Taluks Regulation (Amendment) Act, 1936 (Ben. Act XVII of 1936).

Bengal Regulation I of 1820.

(The Bengal Patni Taluks Regulation, 1820.)¹

(11th January 1820.)

A Regulation for providing that all sales of certain taluks made answerable by sale for arrears of the zamindar's rent shall be conducted in the mode prescribed by Regulation VIII, 1819,² for the sales therein described.

1. Whereas it has been omitted to provide in the rules of Regulation VIII, 1819,² whether, in case the proprietor of an estate paying revenue to Government should desire to bring to sale a saleable tenure of the nature defined in clause *first*, section 8, of that Regulation, for the realization of arrears of rent due thereupon, by any legal process other than that prescribed by the second and third clauses of the said section, such sale should be made in the public manner provided for the periodical sales therein described; Preamble.

And whereas it is consonant with justice, and was intended by the said Regulation, that, in every case of the sale of such tenures for arrears of the *zamindar's* rent, the sale should be public, for the security of the interests of the owner of the tenure sold, which object can in no manner be duly secured except the sales to be so made be conducted by an officer of Government in the same manner as the periodical sales provided for by section 8 of the said Regulation;

the following additional rule has accordingly been passed by the Governor General in Council, to take effect, from the date of its promulgation, within the several districts of Bengal, including Midnapore:—

2. *First*.—Whenever the proprietor of an estate paying revenue to Government shall desire to cause any tenure of the nature of those described in clause *first*, section 8, Regulation VIII, 1819,² to be sold for arrears of rent due to him on account thereof, and shall, under

Rules of Reg. VIII, 1819, for periodical sales for *zamindar's* arrears of rent, extended to other sales for rent.

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation extends to the whole of the former Province of Bengal—see the concluding paragraph of s. 1.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

²The Bengal Patni Taluks Regulation, 1819.

[Ben. Reg. I of 1820.]

(Sec. 2.)

any summary process authorised by ¹[law] have acquired the right of causing such sale to be made, the same shall be conducted, after application from the *zamindar*, by the Register or acting Register of the *Zilla* ²* * * Court, or, in his absence, by the person in charge of the office of Judge of the district in the mode prescribed by Regulation VIII³ above quoted for periodical sales.

Notice by
proclamation.

Second.—Ten days' notice shall be given before proceeding to sale, by proclamation to be stuck up at the *cutcherry* of the Court and at that of the Collector of the district.

Rules extend-
ed to sales
hereunder.

Third.—The rules of sections 9, 11, 13, 15 and 17, Regulation VIII, 1819,³ are extended to all sales made after the manner herein provided.

¹This word was substituted for the words "the general Regulations" by the Amending Act, 1903 (I of 1903).

²The words "or City," were repealed, *ibid.*

³The Bengal Patni Taluks Regulation, 1819.

Bengal Regulation IV of 1821.

[The Bengal Land-revenue (Assistant Collectors) Regulation, 1821.]¹

*A Regulation * * * for explaining the duties of an Assistant Collector of revenue and for defining the duties and powers vested in Assistant Collectors or other officers appointed to the charge of the revenues of parganas or other local divisions, or employed in the performance of any portion of the functions ordinarily belonging to the Collectors of land-revenue.*

1. * * * * * Whereas it is expedient to explain the duties which may be performed by the Assistants to the Collectors of revenue, and to define the duties and powers vested in Assistant Collectors or other officers when appointed to the charge of the revenues of *parganas* or other local divisions, or when employed in the performance of any portion of the functions ordinarily belonging to Collectors of the land-revenue; Preamble.

the following rules have been enacted, to be in force from the date of their promulgation throughout the territories subject to the Presidency of Fort William.

2, 3. [*Power to confer magisterial powers on Collectors, and vice versâ; oath to be taken by such Collectors and Magistrates.*] Rep. by the Repealing Act, 1873 (XII of 1873).

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding clause of s. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in the following Scheduled Districts, namely :—

West Jalpaiguri in the Jalpaiguri district; and
the Western Hills, the Tarai and the Dumson Subdivision, in the Darjeeling district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

²Portion of the title which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

³Portion of section 1 which was repealed by the Repealing Act, 1876 (XII of 1876), is omitted.

(Secs. 4—8.)

4 to 6. [*Magistrates and Collectors, in the exercise of such powers, to be guided by Regulations, etc., in force; Magistrates employed in the collection of revenue to preserve records; rules declaring Collector amenable to Zilla and City Courts to be applicable to such Magistrates.*] Rep. by the Repealing Act, 1876 (XII of 1876).

Institution of suit in Zila Court for recovery of public revenue.

7. In the institution of suits for the recovery of the public revenue, or in any case in which the institution of a suit by the Collector in the Zila ¹* * * * Courts is authorized or directed ²[by law], a Magistrate or Joint Magistrate or Assistant to a Magistrate, employed in the collection of the revenue, not being himself in charge of the office of Judge of a Zila ¹* * * * Court, shall proceed according to ³[the law for the time being in force] for the guidance of the Collectors under similar circumstances.

Power to alter limits of collectorships, and number of officers employed as Collectors.

8. First.—It is hereby declared and enacted that it is and shall be lawful for the “[Provincial Government] to cause such alterations to be made in the limits of the several Collectorships, and in the number of the officers employed as Collectors of land-revenue, as may from time to time appear expedient, as well as to vest such officers, being covenanted servants ⁵* * * * with authority to exercise the whole or any part of the functions ordinarily exercised by Collectors of land-revenue in such *mahál* or *maháls* belonging to such district or districts as may from time to time be deemed expedient; and any officers so employed shall perform their prescribed duties in the same manner, and subject to the same conditions and liabilities, as attached to Collectors of land-revenue in regard to such duties.

Power to depute subordinate officer to perform Collector's duties.

Second.—It shall also be competent to the Board of Revenue or other authority exercising the powers of the Board to depute any of the officers subordinate to their authority to exercise and perform all or any of the powers and duties ordinarily vested in Collectors of land-revenue within such local limits as they may judge expedient:

¹The words “or City” which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²These words were substituted for the words “by the Regulations” by the Amending Act, 1903 (I of 1903).

³These words were substituted for the words “the Regulations already in force,” *ibid*.

⁴These words were substituted for the words “Local Government” by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵The words “of the Honourable Company,” which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

of 1821.]

(Sec. 8.)

Provided, however, that in all such cases the Board or other authority aforesaid shall, on the day in which they may depute any officer as aforesaid or as soon after as practicable, report their having done so for the information and orders of the '[Provincial Government].

Third.—The Collectors of revenue are hereby authorized with the sanction of the Board of Revenue, * * * to delegate to their Assistants any part of their prescribed duties, which, from the extent of their general business or other cause, they may be unable to give due attention to themselves:

Power of Collectors to delegate part of their duties to their assistants.

Provided always that in the event of a Collector deputing his Assistant to make local inquiries, or for any other purpose connected with the collection of the public revenue, he shall immediately report the same for the information and orders of the Board of Revenue * * * to which he may be subordinate.

Fourth.—[Oath to be taken by Assistant Collector.] Rep. by the Repealing Act, 1873 (XII of 1873).

Fifth.—Assistants or other officers exercising the power of Collectors of revenue, or any portion thereof, under the provisions of this Regulation, shall be guided in every respect ³[by the laws] which have been or may be enacted for the management and collection of the revenue, as far as the same may be applicable to the duties committed to them respectively, and shall be considered responsible for the due performance of the duties entrusted to them, and shall be amenable to the Civil Courts of Judicature for any acts done by them in their official capacity, in opposition ⁴[to law], in the same manner, and under the same rules as the Collectors of revenue.

Assistants, etc., to be guided by Regulations, responsible for performance of duties, and amenable to Civil Courts.

¹These words were substituted for the words "Local Government" by paragraph 4 (I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words "or the Boards of Commissioners," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³These words were substituted for the words "by the Regulations" by the Amending Act, 1903 (I of 1903).

⁴These words were substituted for the words "to the Regulations" *ibid.*

Bengal Regulation VII of 1822.

(The Bengal Land-revenue Settlement Regulation, 1822.)

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Bengal Regulation VII of 1822.

(The Bengal Land-revenue Settlement Regulation, 1822.)¹

(8th August 1822.)

*A Regulation for declaring principles according to which the settlement of the land-revenue in * * * [Cuttack,] Pataspur and its dependencies is to be hereafter made, and the powers and duties belonging to Collectors or other officers employed in making, revising or superintending settlements; * * * for defining, settling and recording the rights and obligations of various classes and persons possessing an interest in the land, or in the rent or produce thereof; and for vesting the Revenue-authorities with judicial cognizance in certain cases of suits and claims relating to land, the rent and produce of land.*

1. *Whereas the existing settlement of the land-revenue in the Ceded Provinces will expire with the present Fasli year,⁴ and it has therefore become necessary to declare and enact the principles and rules according to which the demand of the State is thereafter to be regulated, and the manner in which future settlements and revisions of settlements are to be conducted.⁵*

Preamble.

And whereas a moderate assessment being equally conducive to the true interests of Government and to the well-being of its subjects, it is the wish and intention of Government that in revising the existing settlement the efforts of the Revenue-officers should be chiefly directed not to any general and extensive enhancement of the *jama* but to the objects equalizing the public burthens, and of ascertaining, settling and recording the rights, interests, privileges and properties of all persons

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903).

²The words "the Ceded and Conquered Provinces, including" which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

³The words "for continuing, with certain exception, the existing leases within the said provinces for a further term of five years" which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁴i.e., the 1st September, 1822.

⁵The portion printed in italics is obsolete, Bengal Regulation VII of 1822, having been repealed in the North-Western Provinces by the N.-W. P. Land-revenue Act, 1873 (XIX of 1873).

(Sec. 1.)

and classes owning, occupying, managing or cultivating the land, or gathering or disposing of its produce, or collecting or appropriating the rent or revenue payable on account of land, or the produce of land, or paying or receiving any cesses, contributions or perquisites to or from any persons resident in, or owning, occupying or holding parcel of, any village or *mahal* :

And whereas, with these views and intentions, the Governor General in Council has considered it to be expedient and proper, with the exception hereinafter specified, to continue the existing assessment in all cases in which the settlement has been formed with *zamindars* or other persons acknowledged as proprietors or possessors of a permanent interest in the *mahal* for which they may have engaged, until a new settlement can be made, combining, with the revision of the Government *jama* and the deliberate investigation of the facts by the determination of which its amount must be regulated, a full inquiry into, and a careful settlement of the rights and interest of all classes connected with the land :

And whereas the same principles are applicable to [the district of Cuttack,] the *pargana* of Pataspur and its dependencies, of which the settlement will expire with the present "Amli" year¹ :

And whereas it has appeared expedient to make special provision for the early settlement of ²* * * the *pargana* of Pataspur and its dependencies :
3* * * *

And whereas it is the desire of Government that the proceedings held, and the records formed, by the Collectors when making settlements or otherwise specially employed in conducting inquiries of the above nature should be such as that all demands, claims and suits may be adjudged and determined according to the facts therein stated, until the same shall have been formally altered, or it shall be shown, by the result of a full investigation in a regular suit, that the proceeding or record of the Collector was erroneous or incomplete :

And whereas it is necessary to declare and define the powers and authority to be vested in Collectors in the conduct of the said inquiries, and the adjustment of the differences arising out of or made known by them :

And whereas it further appears advisable that the revenue-officers should in certain cases be vested with

¹i.e., the 2nd September, 1822.

²The words " the district of Gorakhpur, the *chakla* of Azamgarh," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

*Portion relating to " the Conquered Provinces " and " the Province of Bundelkhand" were repealed, *ibid*.

of 1822.]

(Sec. 2.)

authority judicially to receive, hear, investigate and determine suits, claims and demands of the above description :

And whereas it appears to be expedient to declare and explain the views and intentions of Government relative to the rights to be enjoyed and exercised by the *sadar malguzars* or persons admitted to engage for the payment of the Government revenue, and by persons collecting the rents of the land or revenue of Government, without being subject to the payment of any portion of it to the public treasury, such as *jagirdars* and other owners or managers of *lakhiraj* lands; and it is particularly necessary, in the case of estates held in *pattidari* or *bhaiya chāra* tenure, to make further provision for protecting the sharers who have not been admitted to engagement with Government against the encroachments of the *sadar malguzar*, and likewise to secure the latter against the consequences of the embezzlement or misappropriation by the former of the funds whence the Government revenue ought to be discharged.

For the purposes and objects above specified the following rules have been enacted, to be in force * * * * in [*the district of Cuttack*,] the *pargana* of Pataspur and its dependencies.

2. First to Fifth.—[*Extension of existing settlements in Ceded Provinces and Cuttack; proclamation of proposed extension; Gorakhpur and Azamgarh excluded; existing leases in Pataspur to continue from year to year.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

Sixth. * * * * * if any *zamindar* or other *malguzar* ³[acknowledged as the proprietor or possessor of a permanent interest in the *mahal* for which he has engaged], who may now or hereafter be under engagement for the payment of the revenue demandable by Government on account of any *mahal*, shall be allowed by the Revenue-authorities to continue in the management of such *mahal* after the expiration of such engagement, and shall do or direct any act relative to the cultivation or management of such *mahal*, or the settlement, assessment or collection of the rents of such *mahal*, in or on account of any year subsequent to the

General rule relative to *zamindars* holding on after expiration of their leases.

¹The words "from the date of their promulgation, throughout the Ceded and Conquered Provinces" which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

²Formal words which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³These words were substituted for the words "as aforesaid" by the Amending Act, 1903 (1 of 1903).

(Sec. 3.)

term of such engagement, such *zamindar* or other *malguzar* aforesaid shall be held to be responsible on account of such year for the same revenue as may have been demandable from him for the year preceding, unless otherwise specially agreed upon :

Provided further that it shall be competent for Collectors or other officers exercising the power of Collector, with the sanction of the Board or Commissioner to whom they may be subordinate, at any time, not being more than six months previous to the expiration of a settlement, to call upon the *zamindars* or other *malguzars* as aforesaid to declare whether or not they are willing to continue their engagements for the ensuing year; and, if such *zamindars* or other *malguzars* shall not forthwith notify their refusal to do so, they shall be held to have agreed to such an extension of their leases at the existing assessment, and so on, from year to year, as aforesaid.

Zamindars or other *malguzars* who may be allowed to hold on from year to year shall not be chargeable with any additional revenue on account of any year, unless the Collector or other officer exercising the powers of Collector shall notify his intention to revise the assessment on or before the commencement of such year, unless where otherwise specially provided.

Settlements
how made.

3. With respect to estates which are at present let to farm, a settlement thereof shall be made on the expiration of the existing leases for such a period as the '[Provincial Government]' may direct.

A preference shall be given to the *zamindars* or other persons possessing a permanent property in the *mahals*, if willing to engage for the payment of the public revenue on reasonable terms :

Provided also that, in cases wherein such *mahals* may be let in farm, the term of the lease granted to the farmers shall not exceed twelve years.

The above rules shall likewise be applicable to estates now held *khas*.

So in any case wherein the *zamindars* and other proprietors may refuse to continue their existing engagements, or to enter into new engagements, on equitable terms, it shall be competent to the Revenue-authorities to let the lands in farm for such period, not exceeding twelve years, as the '[Provincial Government]' shall appoint, or to assume the direct management of them,

¹These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1822.]

(Sec. 4.)

and to retain them under *khas* management during the period aforesaid or such shorter period as may be judged proper:

Provided further that, if in any case it shall appear to the Revenue-authorities that the continuance or admission of any *Raja*, *zamindar*, *talukdar* or other person who may have engaged, or may claim to engage, for any *mahal* or *mahals*, in or to the management of such *mahal* or *mahals*, would endanger the public tranquillity or otherwise be seriously detrimental, it shall be their duty to report the circumstances ¹[to the Provincial Government], and it shall be competent to the ²[Provincial Government] ³[by notification in the *Official Gazette*], to cause such *mahal* or *mahals* to be held *khas* or let in farm, for such term as may appear expedient and proper, not exceeding the period above specified.

4. In admitting particular parties to engage it was in no degree the intention of Government to compromise private rights or privileges, or to vest the *sadar malguzars* with any rights not previously possessed by them, excepting in so far as their interest in the land for which they may have engaged might be improved by the limitation of the Government demand, or otherwise by the resignation in their favour of rights previously vested in Government itself, or as it may have been found necessary, with a view to the punctual realization of the public dues, to vest the *sadar malguzar*, by special Regulation, with authority of distraint, or other powers of coercion over the under-tenants.

Admission of particular persons to engage for payment of revenue, not to bar Revenue-officers from interfering to adjust rights of other persons or classes.

On the contrary, it is the anxious desire of Government, and the bounden duty of its officers, to secure every one in the possession of the rights and privileges which he may lawfully possess or be entitled to possess.

In pursuance of this principle, it is hereby declared and enacted that nothing in the above provisions for extending the existing leases, or in the stipulations of the existing settlements, do or shall be construed to bar the Revenue-officers, duly empowered in that behalf, from interfering to adjust the respective rights of the *sadar malguzars* and their under-tenants; nor shall any

¹These words were substituted for the words "to Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 1 on p. 218, *ante*.

³The words "by an Order in Council" in the original text, are to be read as if the words "by notification in the local official Gazette" were substituted therefor—see the Amending Act, 1903 (I of 1903).

⁴The words "*Official Gazette*" were substituted for the words "local official Gazette" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Sec. 5.)

claims to a remission or abatement of revenue be admitted on the ground of any decision or order passed in that behalf; but, if such decision or order shall operate materially to reduce the profits derived by any *zamindar* or *malguzars* from the *mahal* owned or managed by him, it shall be competent for such *zamindar* or *malguzar* to relinquish his engagements, and the Revenue-officers shall in such case proceed to make a settlement of the *mahal de novo*.

5. [First.—*Repeal of provisions relative to malikana and nankar.*] Rep. by the Amending Act, 1903 (1 of 1903).

Malikana to be allowed to proprietors of estates farmed or held *khas*.

Second.—The proprietors of estates let in farm or held *khas* shall be entitled to receive an allowance of *malikana*, at such rate as the Board * * or other authority exercising the powers of that Board may determine, anything in the existing Regulations notwithstanding: the said *malikana* to be apportioned in cases in which several proprietors may have heretofore held an estate under one common assessment, whether in joint tenancy or otherwise, according to the shares of each respectively:

Provided also that the *malikana* allowance granted to the proprietor or proprietors of any *mahal* shall not in any case be less than five *per cent.* on the net amount realized by ²[the Provincial Government] from the lands; nor shall it exceed ten *per cent.* on that amount without the special sanction of the ³[Provincial Government]:

Provided further that, if the said proprietors shall in any case be in the receipt of any perquisite or the profits of any lands in lieu of the *nankar* formerly granted to them by the Native Governments or otherwise, in consideration of their proprietary tenure, the amount of such allowance shall be deducted from the *malikana* to which they are by this section declared to be entitled:

Provided also that this rule shall not apply to such *zamindars* as may continue in the occupancy of their tenures whilst the *mahal* in which they are included is held *khas* or farmed, or of any part of them, that is to say, *zamindars* who may cultivate or lease their lands and pay the revenue to the farmer or Government officer; nor, without the special sanction of ²[the Provincial Government], to any *malguzar*, *zamindar* or other

¹The words "of Commissioners" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³See foot-note 1 on p. 218, *ante*.

of 1822.]

(Sec. 5.)

proprietor or holder of land who may directly or indirectly continue to draw any allowance from the *raiyats* of the lands farmed or held *khas*:

Provided also that *malguzars*, not being actual proprietors of the land included in the estate for which they may have formerly been under engagements, though recorded in the accounts of past settlements as *zamindars*, *talukdars* or the like, or being proprietors of a part only of such land, shall not receive the above allowance on the *jama* of the estate, but shall receive such allowance in lieu of their title of management as it may appear to ¹[the Provincial Government] to be equitable to assign, in addition to the *malikana* to which they may be entitled on account of any lands held by them in actual property, and of which they may not retain the occupancy: and no *malikana* shall be granted to any *sadar malguzar* on account of lands the occupants of which may deny his right of property, until he shall have established his right by a regular suit in a Court of Justice, or to the satisfaction of the Board. But in such cases such provision will be made for the intermediate support of the party as the ²[Provincial Government] may, on the recommendation of the Board, see fit to direct.

Third.—Provided also that, if any *zamindar* or *sadar malguzar* shall have been called upon by a Collector or other officer exercising the powers of a Collector to state the highest amount of *jama* for the payment of which he may be willing to engage, and shall have stated the same accordingly, the sum so stated by such *zamindar* or *sadar malguzar*, and not the *jama* ultimately realized by ¹[the Provincial Government], shall form the basis on which his *malikana* allowance shall be adjusted; and in such case it shall and may be lawful for the Revenue-authorities to limit the said allowance to five *per cent.* on the said sum, or to a portion thereof, according to the extent of the proprietary interest possessed by the said *zamindar* or *sadar malguzar*:

Zamindars may be called upon to state *jama* for which they are willing to engage.

Provided also that, if a *zamindar* or *sadar malguzar*, when so called upon, shall fail to specify or tender any sum as aforesaid, then and in that case the net revenue derived by ¹[the Provincial Government] from the *mahal*, on account of the year preceding that in which the Collector or other officer aforesaid may make the said requisition, shall be taken as the sum by which the amount of *malikana* (not being less than five, nor more than ten, *per cent.* on the same) shall be adjusted.

¹See foot-note 2 on p. 220, *ante*.

²See foot-note 1 on p. 218, *ante*.

(Sec. 6.)

Revenue-officers may revise settlement of estates of which existing leases shall be extended under section 2 during continuance of such extended lease.

Revision of settlement how made.

Revision of settlement not to operate to alter *jama* payable on account of lands included in existing engagements.

6. *First*.—In cases wherein the existing engagements may be continued under the rule contained in section 2 of this Regulation, it shall and may be lawful for the Collectors, with the sanction of the Board,¹ * to enter at any time in the course thereof on a revision of the settlement notwithstanding such continuance of the existing leases, and to adopt such measures as may be requisite for ascertaining and determining the extent and produce of the lands, and the amount of *jama* properly demandable therefrom, and for procuring and recording the fullest possible information in regard to the rights, interests, privileges and properties of the agricultural community, and to determine the same, with the same powers and authority as they now are or may hereafter be entitled to exercise in forming the settlement of estates open to re-assessment.

Second.—The said revision of the settlement shall be made village by village and *mahal* by *mahal*; and such number of *mahals* shall be revised in each year, as the Board, under the orders of the ²[Provincial Government], may direct.

Third.—Such revision of the settlement shall not operate to disturb the existing engagements during the period for which they may be continued under the provisions of section 2 of this Regulation in so far as such engagements relate to the amount of *jama* demandable by Government; but the said engagements shall be held and considered to include only such villages and lands as may be specified in the proceedings or accounts of the settlement last concluded; and, if on the revision of the settlement of any *mahal* it shall be found that there has been any material error or concealment of lands belonging to such *mahal*, the Collector shall be authorized, subject to the orders of the Board, separately to assess the lands so withheld from the knowledge of the Revenue-authorities, in the same manner and with the same powers as he would assess an unsettled *mahal*:

Provided also that nothing in this or the preceding sections shall be construed to prevent the Revenue-officers from passing and enforcing such orders in regard to the rights and interests to be enjoyed by the different classes of persons connected with any *mahal*, during the period for which the existing settlement has been extended, as they may or shall be authorized to pass or enforce when adjusting the assessment of an unsettled *mahal*.

¹The words "of Commissioners" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²See foot-note 1 on p. 218. *ante*.

of 1822.]

(Sec. 7.)

Fourth.—[Revision of settlement in Conquered Provinces and Bundelkhand.] Rep. by the Amending Act, 1903 (1 of 1903).

7. *First.*—When a Collector ¹* * [in the Province of Cuttack] shall have completed the revision of the settlement of any *mahals* under the rules contained in the preceding section, it shall and may be lawful for him, subject to the orders of the Board ²* * * and ³[of the Provincial Government], to grant to the proprietors, if willing to engage on adequate terms, renewed leases for such further term of years subsequent to the year 1234⁴ *Fasli* or *Amli* as the ⁵[Provincial Government] may direct.

Leases to be granted on revision of settlement.

Second.—The assessment to be demanded on account of the years subsequent to the year 1234 *Fasli*⁴ to which leases renewed as above may extend, shall be fixed with reference to the produce and capabilities of the land as ascertained at the time when the revision of the settlement shall be made unless under special circumstances justifying a prospective enhancement of the Government demand:

Jama for years subsequent to 1234, how adjusted.

Provided also that the amount of such assessment shall not be raised above that of the present *jama*, unless it shall clearly appear that the net profits to be derived from the land by the *zamindars* and others who may be entitled to share in the profits arising out of the limitation of the Government demand will exceed one-fifth of that amount; and, in cases wherein any increase may be demanded, the assessment shall be so regulated as to leave the *zamindars* and others aforesaid a net profit of twenty *per cent.* on the amount of the *jama* payable by or through them respectively: no abatement on the existing *jama* will be allowed unless on the clearest grounds of necessity.

Third.—The *pattas* granted on such revised settlements shall be held only to secure the *malguzars* from further demand during the term of their respective leases, on account of the lands specified in it, or described in the settlement *rubakari* of the Collector with such allowance for error as may be distinctly declared at the time of settlement.

Pattas granted on revised settlement to cover only lands specified.

¹The words "in the Ceded Provinces or" which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

²The words "of Commissioners" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³These words were substituted for the words "of Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴i.e., A. D. 1826.

⁵See foot-note 1 on p. 218, *ante*.

(Secs. 8, 9.)

Zamindars and other persons entering into engagements will be required therefore to afford the fullest and most correct information in regard to the *ragha* of the *mahals* for which they may engage.

Fourth.—[*Grant of renewed leases in Conquered Provinces and Bundelkhand.*] *Rep. by the Amending Act, 1903 (1 of 1903).*

Power to
postpone
final
settlement
until
expiration of
current leases.

Fifth.—If any *zamindar* or other *sadar malguzar*, the settlement of whose estate may be revised under the above rules, shall refuse to enter into suitable engagements for a further period beyond the term of the then current lease, or if after such revision the Revenue-authorities shall under any other circumstances deem it expedient to postpone taking further engagements for the payment of the revenue of any *mahals* until the expiration of the current leases, it shall be competent to them to do so; and in such case the several rules contained in section 3 of this Regulation, relative to estates of which the settlement will expire with the present year, shall on the expiration of the said leases be and be held applicable to such *mahals*.

Rules applied
to estates in
Gorakhpur,
etc.

Sixth.—The same rules shall also be applicable to the several *mahals* within * * * the *pargana* Pataspur and its dependencies, as they may respectively become, or be declared, open for re-settlement.

Letting of
excess
waste-lands.

8. Where the waste-land belonging to or adjoining any *mahal* is very extensive, so as considerably to exceed the quantity required for pasturage, or otherwise usefully appropriated, it shall be competent to the Revenue-officers to grant leases for the same to any persons who may be willing to undertake the cultivation in perpetuity, or for such periods as the ²[Provincial Government] shall determine; and to assign to the *zamindars* or others who may establish a right of property in the lands so granted an allowance equivalent to ten *per cent.* on the amount payable to Government by the lessees, in lieu and bar of all claims to or in the waste-lands, so granted, or such other perquisites or privileges as by the custom of the country they may appear in such cases entitled to receive.

Allowance to
zamindars.

Investigations
by Collectors
making or
revising
settlements.

9. *First.*—It shall be the duty of Collectors and other officers exercising the powers of Collectors, on the occasion of making or revising settlements of the land-revenue, to unite, with the adjustment of the assessment and the investigation of the extent and produce of the

¹The words "the district of Gorakhpur, the *chakla* Azamgarh," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

²See foot-note 1 on p. 218, *ante*.

of 1822.]

(Sec. 9.)

lands, the object of ascertaining and recording the fullest possible information in regard to landed tenures, the rights, interests and privileges of the various classes of the agricultural community.

For this purpose their proceedings shall embrace the formation of as accurate a record as possible of all local usages connected with landed tenures, as full as practicable a specification of all persons enjoying the possession and property of the soil, or vested with any heritable or transferable interest in the land or the rents of it, care being taken to distinguish the different modes of possession and property, and the real nature and extent of the interests held, more especially where several persons may hold interests in the same subject-matter of different kinds or degrees.

This record shall, in *pattidari* or *bhaiya chāra* villages or the like, include an accurate register of all the co-parceners, not merely the heads of divisions, such as the *pattis*, *thoks* or *behris*, but also as far as possible of every person who occupies land, disposes of its produce or receives rent as proprietor or as agent for one or more proprietors holding land and disposing of its produce, or receiving the rents of it in common, with a detailed statement of the interior arrangements adopted by the brotherhood for the distribution of the profits derived from sources common to the co-parcency where any such exist, and for determining the share of the Government *jama* and of the village-expenses which each parcener is to contribute, or the other modes in which the engaging parcener or intermediate *pattidars* and *behridars* collect from the cultivators.

A record shall likewise be formed of the rates per *bigha* of each description of land or kind of produce demandable from the resident cultivators not claiming any transferable property in the soil, whether possessing the right of hereditary occupancy or not, and the respective shares of the *sadar malguzar* or other manager, and the cultivator, in lands cultivated under *kankut*, *batai* or similar engagements, with a distinct specification of all cesses or extra collections made by the *malguzar* or village-manager, or other.

The names of all the village-*patwaris* and village watchmen shall also be registered, with a statement of the amount and nature of the allowance assigned them.

And all *lakhiraj* tenures shall be carefully recorded, with a specification of the nature of the tenure.

The information collected on the above points shall be so arranged and recorded as to admit of an immediate reference hereafter by the Courts of Judicature, it being

(Sec. 10.)

understood and declared that all decisions on the demands of the *zamindars* shall hereafter be regulated by the rates of rent and modes of payment avowed and ascertained at the settlement, and recorded in the Collector's proceedings until distinctly altered by mutual agreement, or after full investigation in a regular suit: and all cesses or collections not avowed and sanctioned, nor taken into account in fixing the Government *jama*, shall be held illegal and unauthorized, unless now or hereafter specially ¹[sanctioned by the Provincial Government.]

Collectors,
etc., may
grant *pattas*
to *mufassal*
zamindars
and *raiyats*.

Second.—Provided also that it shall be competent to Collectors and other officers as aforesaid (subject to the orders of the Board ²* *) to grant *pattas* to the several *mufassal zamindars* and *raiyats* or other owners or occupants of land, for the land owned or occupied by them, specifying the amount to be paid by them, and all the conditions attaching to their tenure; and a register of all *pattas* so granted shall form a part of the *rubakari* of settlement.

Power to take
engagements
for revenue
without
completing
detailed
inquiry.

Third.—Provided, however, that, if from the number of estates of which the lease may at once expire in any district, or from any other special cause, it shall be found necessary, for the security of the Government revenue, to take engagements from any *zamindar*, *malguzar* or farmer, without completing the detailed inquiries above directed, it shall be competent to the ³[Board] of Revenue or other authority exercising the powers of ⁴[that Board] to cause engagements for the revenue to be taken in the manner heretofore in use, reporting the circumstance to the ⁵[Provincial Government], but the term of the engagements so taken shall not exceed five years, and the rules relative to the revision of the settlements of *mahals* of which the existing leases have been extended under the provisions of section 2 of this Regulation shall be equally applicable to estates for which such engagements shall be taken.

Power to
determine
which of several
holders of
differing interests,
having separate
properties in
same land,
shall be admitted
to engage, and
to prescribe
distribution
of profit resulting
from limitation
jama.

10. First.—Of several parties possessing separate heritable and transferable properties in any parcel of land or in the produce or rent thereof, such properties

¹These words were substituted for the words "sanctioned by Government" by Sch XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words "of Commissioners" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³This word was substituted for the word "Boards" by the Amending Act, 1903 (1 of 1903).

⁴These words were substituted for the words "such a Board," *ibid.*

⁵See foot-note 1 on p. 218, *ante*.

of 1822.]

(Sec. 10.)

consisting of interests of different kinds, it shall be competent to the ¹[Provincial Government] to determine and direct which of such parties shall be admitted to engage for the payment of the Government revenue, due provision being made for securing the rights of the remaining parties.

It is further hereby declared and enacted that it is and ²[shall be competent to the ³Provincial Government or such other authority to whom the power to confirm settlements may be delegated by the ³Provincial Government by notification in the ⁴*Official Gazette*] in confirming the settlement of any *mahal* in perpetuity or for a term of years, to determine and prescribe the manner and proportion in which the net rent or profit arising out of the limitation of the Government demand shall be distributed among the different parties possessing an interest in the lands appertaining to such *mahal* or in the rent or produce of such lands or *mahal*.

Second.—In cases wherein any land appertaining to a *mahal* hitherto recognized as the *taluk*, *zamindari* or the like, of one or more *sadar malguzars*, may be owned or occupied by other persons holding under the *sadar malguzar* and possessing an heritable and transferable property therein or an hereditary right of occupancy subject to the payment of a fixed rent, or of a rent determinable by a fixed principle, if the title of the said *sadar malguzar* to engage for the revenue be upheld, and generally in cases wherein the tenure of an intermediate *malguzar* or manager between ⁵[the Crown] and the proprietors or hereditary occupants of the soil may be maintained, whether the Government revenue be collected from the *zamindar*, *talukdar* or other hereditary intermediate *malguzar*, or the *mahal* be farmed or held *khas*, it shall be competent to the Collector or other officer who may be employed in adjusting the *jama* to be assessed on such *mahal*, with the sanction of the Board previously obtained and subject to the orders and directions of that authority, to make a *mufassal* settlement with each of the proprietors or occupants aforesaid

Mufassal settlements in cases where title of intermediate manager between Government and proprietors or hereditary occupants of soil are maintained.

¹See foot-note 1 on p. 218, *ante*.

²These words were substituted for the words "shall be competent to the Governor General in Council" by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

³The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The words "*Official Gazette*" were substituted for the words "local official Gazette", *ibid*.

⁵These words were substituted for the words "the Government" by Sch XIV, *ibid*.

(Sec. 10.)

for the land possessed by him, and to grant such proprietors or occupants *pattas* defining the condition on which they are to hold their land, whether subordinate to the *sadar malguzar* or to the farmer or ¹[officer of the Crown] employed in the *khas* management; and in all such cases, if engagements for the Government revenue of the *mahal* be taken from the intermediate hereditary *malguzar*, the particulars of the *mufassal* settlement, when approved by the Board, shall be endorsed on the *patta* to be granted to the *sadar malguzar*, or shall be so incorporated with the engagement taken from him as to form part of the same.

Settlement
where
several
persons
hold
common
property
subject to
common
obligations.

Third.—In cases in which two or more persons may possess a joint property in any village, *mahal* or parcel of land, or in the rent or produce of any village, *mahal*, or land, or in any part of such village, *mahal*, land, rent or produce, the property of such persons consisting of interests of the same kind, whether of the same extent or otherwise, as well as in cases wherein such property in any *mahal*, village, land, produce or rent may be separately possessed by parties subject by prescriptive usage to common obligations, whether existing or contingent, it shall be competent to the Collector or other officer exercising the powers of Collector, subject to the orders and direction of the Board and of the ²[Provincial Government], either to make a joint settlement with the parties collectively or a majority of them, or with an agent appointed by them or a majority of them, or to select one or more of them to undertake the management of the *mahal* as *sadar malguzars*, due advertence being had to the wishes of all the co-parceners, and to the past custom of the village or villages comprised in the *mahal*.

When joint
settlement
to be made,
parties how
summoned.

Fourth.—When it shall be determined to make a joint settlement for any village, *mahal* or parcel of land with the parties possessing therein a joint property as aforesaid, the Collector or other officer making the settlement shall give notice of his intention, by a written proclamation to be stuck up in some public place within the village, *mahal* or land, and shall require all persons possessing therein a property as aforesaid to attend, either in person or by representative duly authorized in the matter, within a reasonable period, at a stated place and time, and to declare their agreement or non-agreement to the *jama* proposed to be assessed on the village or land.

¹These words were substituted for the words "officer of Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 1 on p. 218, *ante*.

of 1822.]

(Sec. 10.)

Fifth.—If any person or persons, when summoned as above, shall refuse, neglect or omit to attend, either in person or by representative, such person or persons shall be held to be bound by the decision of the majority of those who may attend, in agreeing or disagreeing to the *jama*, and his or their interests and estate shall, unless otherwise specially allowed, be held responsible for the Government revenue, and be liable to sale in the event of any arrear accruing on account of the settlement.

Persons wilfully failing to attend when summoned, to be bound by decision of majority present.

Sixth.—If any person or persons shall attend and shall object to the *jama* proposed to be assessed, then, should a settlement be made with the other parties present, the objecting parties shall be left in the enjoyment of the same rights and interests as they would enjoy in the event of the *mahal* being farmed or held *khas*: and, in so far as regards the lands to which such rights and interests attach, the other parceners, if their engagements be extended thereto, shall be considered farmers of the Government revenue to hold the same under leases of such term as may be determined and agreed upon under the general rules applicable to lands for which the proprietors may refuse to engage.

Treatment of parceners not joining in settlement.

Seventh.—When any *mahal* or portion of a *mahal*, held by a number of cultivating proprietors in *pattidari* or *bhaya chára* tenure or the like, shall be let in farm or held *khas*, the rent demandable from the proprietors of such *mahal* or portion of *mahal*, on account of the land occupied and cultivated by themselves, shall be adjusted by the rates payable by *raiya*s or other resident cultivators not having an heritable and transferable property in the soil, for lands of a similar description in the same or in the adjoining villages, with a deduction of five *per cent.*, on account of *malikana*, or such other rate, not being less than five *per cent.*, as [the Provincial Government] may determine.

Rates of rent of cultivating proprietors of lands of which revenue collected *khas* or farmed.

Eighth.—When it shall be determined to make a settlement of a *mahal* of the above description with one or more of the parceners selected to manage, collect and account for the public revenue as *sadar malguzar*, then and in that case the interests of the non-engaging parceners shall not be held answerable for the default of the *sadar malguzars*, save and except in so far as may be specifically provided.

Liability for default of non-engaging parceners when settlement of *mahal* made with one or more of them as *sadar malguzar*.

Such parceners shall, until regularly separated, continue to hold their lands as subordinate proprietors,

¹These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Sec. 10.)

subject to the payment of rent or revenue to the *sadar malguzar* at the rates and in the mode heretofore in use, excepting in so far as that usage may be affected by the determination ¹[of the Provincial Government] in regard to the distribution of the net rent or profit derived from the limitation of the Government demand, or by the rules now in force or hereafter to be enacted, for vesting the *sadar malguzars* with specific powers over the subordinate tenants in the collection of the rent or revenue demandable from them.

The responsibility attaching to the persons selected as *sadar malguzars* and the conditions under which they are to hold that title of management will in each case be specifically declared at or after the time when the settlement is confirmed.

The conditions and limitations under which the subordinate proprietors shall be admitted to separate engagements will also be similarly declared.

Parcels
separately
owned and
occupied may
be separately
settled.

Ninth.—Provided further that, in all cases wherein different parcels of land belonging to any *mahal* may be separately owned and occupied by different proprietors or by different bodies of proprietors, it shall be competent to the ²[Board] of Revenue or other authority exercising the powers of that Board to cause a separate settlement to be made for the land owned and occupied by each proprietor or by each body of proprietors, and each parcel of land for which a separate settlement may be so made shall be held exclusively responsible for the revenue assessed upon it:

Power to
partition and
to settle
separately with
each proprietor.

Provided also that, if the several parties possessing a joint property or separate properties subject to a common obligation as aforesaid, or any of them, shall apply to a Collector or other officer making or revising a settlement to have separate possession of their several share or shares in such joint property, or to be admitted to separate engagements, it shall be competent to such Collector or other officer, with the sanction of the Board or other authority to which he may be subordinate, to make a partition of the property among the different parties according to their respective interests, and to make a separate settlement with each of them or with such as may desire to enter into separate engagements.

Proprietors
excluded from
engagements
may have
their names
registered.

Tenth.—In all cases wherein any proprietors may be excluded from engagements the Collector shall be careful to let it be known that all persons possessing a property in the *mahal* are entitled to have their names

¹These words were substituted for the words "of Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²This word was substituted for the word "Boards" by the Amending Act, 1903 (I of 1903).

of 1822.]

(Secs. 11, 12.)

recorded in the *rubakari* of settlement, with the amount or rate of the assessment demandable from each.

11. First.—The Collector's proceedings in forming the registry above directed shall be founded on the basis of actual possession, and that officer shall, in every instance, be careful to record the precise nature of the authority on which the entries in his books may be made.

Collectors forming such registry to proceed on basis of actual possession.

In conformity with the above principle it shall be competent to the Collectors or other officers when making or revising settlements, or otherwise deputed to investigate and determine the circumstances of any *mahal*, and the nature of the tenures connected with it, to correct the errors or omissions of former settlements by admitting to engagements or entering on the public records the names of the persons found in the *bonâ fide* possession of land or in the receipt of rent under a proprietary title; and in such cases the Collector will hold an official proceeding, explaining fully the grounds on which he may act.

12. First.—In cases in which the proportion of the Government *jama* and village-expenses payable by each proprietor and by each body of proprietors comprised in the several *pattis*, *behris* and other divisions of an estate held under *pattidari* or *bhaiya chára* tenure or the like may have been originally fixed on a measurement of the lands occupied by each, with reference to the quantity in cultivation, and may be liable by the usage of the country to periodical adjustment on the same principle, if the Collector or other officer making or revising the settlement shall be satisfied, by examination of the *patwaris'* accounts or otherwise, that the contributions paid by any proprietor, or body of proprietors as aforesaid are materially in excess of the amount justly demandable from them, it shall be competent to him, with the previous sanction of the Board, to cause a new distribution to be made of the revenue and charges payable by each, with reference to the above principle, and to such resolutions as ¹[the Provincial Government] may have passed relative to the apportionment of the net rent or profits arising out of the limitation of the Government demand, and in the performance of this duty to employ the *kanungo*, and such person or persons as he may judge it advisable to appoint, and to settle the *jama* payable by the different parties according to the award of such person or persons, or otherwise as shall appear to be just and equitable.

In estates held under *pattidari*, *bhaiya chára* or like tenure Collectors may re-allot revenue and charges payable by several *parceners* ;

¹These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Sec. 13.)

and in certain cases may make fresh partition of land.

Second.—In like manner, in cases in which the several proprietors shall be entitled not only to an adjustment from time to time of the *jama* payable on account of the lands occupied by them, but likewise to a periodical partition of the lands of the village, with reference to the share recorded as belonging to each, it shall be competent to the Collector to cause a fresh partition of the lands and adjustment of the *jama* to be made as above prescribed, and at the same time to fix and declare the period from which the arrangement as finally settled is to have effect, and to adjust the claims of the parties relative to the revenue intermediately paid by them, as may appear equitable:

Provided, however, that no such partition or adjustment shall be final until confirmed by the Board¹ * or other authority exercising the powers of that Board:

Cases in which parties affected by Collector's decision may contest it in Court.

Provided also that, if any parties shall dispute the existence of the usage under which the partition of the lands shall have been made, and shall claim to be restored to possession of the lands which the Collector may have transferred to another, or shall consider himself entitled to the benefit of a new partition of the lands comprised in the *mahal* to which he may belong, in any case in which the Collector may have refused to order it, it shall be competent to the said party to bring a regular suit in the *Zila* Court against the person or persons to whom the land may have been transferred, or the person or persons who may resist the partition, to try the justness of the Collector's decision; but, if the existence of the usage shall be admitted or established, it shall not be competent to the Courts of Judicature to question the accuracy of the partition of the land or adjustment of the *jama*;

On what points revenue-officer's decision conclusive.

and, whenever the decision of a Collector for the partition of any land shall be set aside, it will of course belong to the Revenue-authorities to re-adjust the *jama* with reference to the interests of the parties as defined and settled by the final decision of the Courts of Judicature, and to the conditions of the tenure, and to any general or special resolution of² [the Provincial Government] relative to the distribution of the net rent or profit arising out of the limitation of the public assessment.

Collectors not to disturb possession unless specially authorized.

13. Collectors and other officers exercising the powers of Collectors shall not, unless where specially authorised in the manner prescribed in this or some

¹The words "of Commissioners" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²See foot-note 1 on p. 231, *ante*.

of 1822.]

(Sec. 14.)

other ¹[law], do any act tending to disturb possession, but shall leave the *Adalat* to investigate in a regular suit all claims of persons not in possession but deeming themselves entitled to be so.

14. First.—Collectors making or revising settlements shall, in cases in which any dispute may exist in regard to the nature of the tenure of any person occupying the soil, be competent to declare in an official proceeding, to be incorporated in the *rubakari* of settlement, the nature and extent of the interests actually possessed by such occupant, referring to the denomination heretofore applied to him only as one means of proof in regard to the nature of the interest, but stating at length, with specification of any examination he may take for his satisfaction, the grounds of his determination;

Collectors making or revising settlements may declare nature and extent of interests of persons occupying land.

so also in cases of dispute regarding the extent of the interest belonging to any sharer in a village or villages held under *pattidari*, *bhaiya chāra* or the like tenure, such sharer having actual possession of a portion of such village or villages, or being in the actual receipt as proprietor of a share of the joint profits of the land, it shall be competent to the Collector to decide the point in the first instance in his *rubakari* of settlement, and to enforce his decision, leaving the party who may deem himself aggrieved to seek redress by a regular suit in the Courts to try the right;

but nothing herein contained shall be construed to authorise the Courts to interfere with the decision of the Collector in regard to the amount or proportion of *jama* to be assessed on any parcel of land, or in respect to the quantity and description of land, to be assigned in partition to the holder of any specific share of a joint estate.

Second.—The above rule shall not be construed to empower Collectors, unless otherwise authorized, to take cognizance of any claim to receive a larger portion of the common profits than the claimant has hitherto enjoyed, or to hold a larger portion of the village or villages than he has hitherto occupied.

Cognizance of claims to larger profits, or larger share of village, than hitherto.

Third.—The decisions passed by the Collectors under the above powers, if not altered or annulled by the Board or ²[by the Provincial Government], shall be maintained by the Courts, unless on investigation in a regular

Maintenance by Courts of decisions of Revenue-officers.

¹This word was substituted for the word "Regulation" by the Amending Act, 1903 (1 of 1903).

²These words were substituted for the words "by Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Sec. 14.)

suit it shall appear that the possession held under such a decision is wrongful; and nothing herein contained shall be understood to authorise any Court to interfere with the decision of the Revenue-authorities relative to the *jama* to be assessed on any *mahal* or portion of a *mahal*, or to the extent and description of lands belonging to any *mahal* that may be assigned on the partition of the same to the several parceners concerned.

Bar to
interference
by Courts.

Cognizance
by Collectors
of complaints
of wrongful
dispossession.

Fourth.—If any person shall complain to a Collector or other officer making or revising the settlement of any *mahal* that he has been wrongfully dispossessed from any lands, premises, crops, orchards, pasture-grounds, fisheries, wells, water-courses, tanks, reservoirs or the like, within such *mahal*, or of the rents, produce or profits of such lands, premises, etc., the like as aforesaid, or that he has been wrongfully disturbed in the possession thereof, it shall be competent to the Collector or other officer aforesaid to inquire into the matter, and, if the party so complaining shall appear to have been in possession in the year preceding that in which the complaint is brought, and there shall otherwise be reason to believe that he has been violently or wrongfully dispossessed or disturbed, it shall be competent to the Collector to restore or confirm him, recording the grounds of his determination in a *rubakari*; and the opposite party shall in such case be left to bring a regular suit in Court to try the question of right.

Adjustment
of disputes
as to
possession.

In like manner, should a Collector or other officer as aforesaid find that there exist in any *mahal* of which he may be making or revising the settlement any disputes, relative to the possession of lands, premises or the like which it may be expedient to adjust, it shall be competent to the Collector or other officer aforesaid to pass a decision determining the point of possession, leaving the question of right, if further disputed, to be settled by the result of a regular suit in the *Adalat*.

Cases to which
foregoing
provisions
apply.

Fifth.—The above provisions will be held to apply to all cases in which a *zamindar* or under-tenant, whether farmer or *raiyat*, having by special deed or prescriptive title a right of occupancy, shall have been wrongfully ousted from the occupancy of lands held and cultivated by him in the preceding year, or in which the rents and profits of any land which were received by such dispossessed party in the preceding year shall be withheld from him without a legal award, or a voluntary act of the party involving the transfer, renunciation or relinquishment of such rents and profits.

But the above rule shall not apply to any case in which the complaining party may have executed any

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(Secs. 15, 16.)

deed purporting to be a relinquishment of possession, unless it shall have been established by some judicial proceeding that such deed was extorted by force and terror, nor to any cases wherein the complainant shall have in any way lost or relinquished possession previously to the commencement of the year preceding that in which the complaint may be preferred.

15. In the settlement of any resumed *mahal* held or pretended to be held under *sanads* from the ruling power, or from the *amils* or other [officers of the Crown], whether such lands shall have been heretofore subject to the payment of revenue or otherwise, it shall be competent to the Collector or other officer making the settlement to hear, try and determine all claims to the property and possession of the land comprising such *mahal*, or the rents or produce thereof, anything in the existing Regulations notwithstanding, and subject to the orders and direction of the Board of Revenue or other authority exercising the powers of that Board to give possession to, and conclude a settlement with, the party who may appear to have the best title, leaving other claimants to establish their claims by a regular suit in the Zila ²* * Court, by which ³* * * all decisions passed by the Revenue-authorities under this section may, on such suit being fully heard, sued and determined, and not otherwise, be revised, annulled or altered.

In settling resumed *mahals* Collectors may take cognizance of claims to property therein;

and may give possession to parties appearing to have best title.

The above rule shall not extend to lands held free of assessment under grants made by or at the request of the proprietors themselves or their representatives, the settlement of which shall ordinarily be made with the parties in possession, if willing to engage on adequate terms.

Limitation of rule.

16. It shall be competent to the "[Provincial Government] to grant to a Collector making or revising the settlement of any *mahal*, whether the same may have been held by a *lakhiraj* tenure resumed, or being *mal-guzari* may have become open to re-settlement in ordinary course, special authority to hear, try and determine as above all claims to the property and possession of the lands lying within such *mahal* or the rent or

Power to grant to Collectors making or revising settlements special authority to take cognizance of claims to property and possession of land.

¹These words were substituted for the words "officers of Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words "or Provincial" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words "according to the value of the interest at stake," were repealed, *ibid*.

⁴See foot-note 1 on p. 218, *ante*.

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(Sec. 17.)

produce thereof, and to give possession to the party who may appear to have the best title, subject to the orders and direction of the Board and further subject, as above, to the revision of the Zila ¹* * Court on a regular suit:

Provided also that, whenever special authority may be given to any Collector as aforesaid, notice of the order of Government shall be published by a proclamation within the *mahals* to which the authority so given may extend; and it shall be the duty of the Collectors and the ²[Board] to see that such proclamation is duly made.

But no decision passed by a Collector under this or any other section whereby such notification is required shall be disturbed by any Court of Judicature, otherwise than after a full and regular investigation of merits, on the plea that proclamation was not made.

Power to take cognizance of claims to property in lands held *lakhiraj*, or at a *mukarrari jama*, under valid tenures, and to settle with proprietors on behalf of *lakhirajdar* or *mukarraridar*.

17. It shall be competent to Collectors and other officers engaged in making or revising the settlement of any *pargana*, *mauza* or other local division, on the application of persons claiming a right of property in lands held free of assessment, or at a *mukarrari jama*, under unquestioned grants from the ruling power, or from the *amils* or other ³[officers of the Crown], and situate within or adjoining to such *pargana*, *mauza* or other local division, to receive, try and determine the claim; and, if satisfied that the applicants do possess or are entitled to possess an hereditary and transferable property in the land or the produce or rent thereof, the Collector or other officer, with the ⁴[sanction of the Provincial Government] previously obtained, shall be authorised to conclude a settlement with them on behalf of the *lakhirajdar* or *mukarraridar* for such period as the ⁵[Provincial Government] may direct, and shall grant to each of the said proprietors *pattas* defining the conditions on which they are to hold their lands subordinate to the *lakhirajdar* or *mukarraridar*.

¹The words "or Provincial" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²This word was substituted for the word "Boards" by the Amending Act, 1903 (1 of 1903).

³These words were substituted for the words "officers of Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words "sanction of Government", *ibid*.

⁵See foot-note 1 on p. 218, *ante*.

of 1822.]

(Secs. 18, 19.)

It shall further be competent to the Collector, under the orders of the Board,¹ * * to fix and declare the amount of *malikana* or other proprietary allowance to be paid by such *lakhirajdars* or *mukarraridars* to the said proprietors, in the event of their being divested of the occupancy and management of their lands:

Provided, however, that either party who may be dissatisfied with the decision of the Collector as to the question of the right of property shall be at liberty to contest the same in a regular suit in the *Adalat*; but the Court shall not interfere to alter the terms on which the settlement may have been made by the Collector with proprietors, or the amount of *malikana* granted to such persons.

18. The Collector shall in cases of doubt be the Judge of the question of jurisdiction, subject to the orders of the Board and ²[of the Provincial Government]; and the Courts of Judicature shall not disturb possession given by the Collector except on a regular suit, and on a decision as to the right.

Collectors to be judges of question of jurisdiction.

19. *First.*—It shall be competent to Collectors, when prosecuting the above enquiries or hearing and trying the above suits, or otherwise when authorised in that behalf by the Board to which they may be subordinate, to require all *sadar malguzars* and other persons owning, occupying, managing or cultivating any lands within or in the vicinity of the *mahal* to which their inquiries may extend, or gathering or disposing of the produce thereof, or collecting, enjoying or appropriating any rent or revenue derived therefrom, as well as the *gumashtas* or other agents employed by such persons in the management or cultivation of the land, or in the collection of the rent, produce or revenue thereof, to attend and produce all accounts or other papers which they may respectively possess relative to such lands, produce, rent or revenue, and to examine the said persons on oath, or *halafnama* to the truth of the accounts produced, or any other matter relating to such accounts, or regarding the lands, produce, rent or revenue of the *mahal* or the rights and interests attaching to such lands, produce, rent or revenue:

Collectors authorized to summon witnesses and require production of accounts.

Provided, however, that no person shall be compelled to answer on oath or solemn declaration any interrogation regarding matters wherein he may have an immediate personal interest in concealing the truth,

¹The words "of Commissioners" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²These words were substituted for the words "of Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Sec. 20.)

or in uttering what is false, not being an interest arising out of fear, favour or reward, or any corrupt bargain or agreement with another party.

Rules of Regulation II, 1819, applied to process issued by Collectors ;

Second.—The rules contained in section 11, Regulation II, 1819¹, relative to the mode of serving process on persons who may be required to attend and produce accounts under the provisions of that Regulation, shall be and be held applicable to processes issued by Collectors or other officers under the rules contained in this Regulation.

also to *patwaris* and others summoned or examined.

In like manner the provisions of section 12 of the said Regulation shall be applicable to all *patwaris*, *gumashtas* or other persons by whom the accounts of any lands, regarding which the said inquiries may have been instituted, may be kept, and who, after being duly summoned as aforesaid, may neglect or omit to produce any of the accounts required from them, or to give their evidence regarding them, or who may deliberately give a false deposition on oath or solemn declaration, when summoned and examined as aforesaid, or who may alter, fabricate, falsify or mutilate the accounts which they may be required to produce:

Powers of Collectors.

Provided further that Collector and other officers employed in the settlement of the land-revenue, or in any of the inquiries specified in this Regulation, shall be vested with all the powers and authority which are or may be lawfully exercised by Collectors in cases depending before them under Regulation II, 1819¹; and the rules contained in clause, third, ²sections 13, 14 and 19 of the said Regulation shall be and be held applicable to all persons who may be summoned by any Collector or other officer aforesaid, or who may resist the process of a Collector issued under the rules of this Regulation, or who may refuse to take an oath or subscribe a solemn declaration when required, or who may deliberately give a false deposition on oath or under a solemn declaration taken instead of an oath, or may cause or procure another to do so.

Rules applied to other persons upon whom process may be issued.

³20. *First.*—The powers specified in sections 11, 12, 14, 16, 17, 18 and 19 of this Regulation shall be

¹Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

²*Sic* in Clarke.

Powers ordinarily vested in Collectors making or revising settlements.

³So much of s. 20 and the following sections as applies to suits for rents, to complaints of excessive demand or undue exaction of rent, or of the non-delivery of *patnas* or receipts, to suits against agents for money or accounts, or to any other suits or complaints arising out of disputes between landholders or farmers and their under-tenants respecting the rent and occupancy of land, has been repealed by the Bengal Rent Act, 1859 (X of 1859), wherever that Act extended. The matter printed in *italics* in this section seems to be obsolete in consequence of that repeal.

Settlement Regulation, 1822.

of 1822.]

(Sec. 20.)

ordinarily exercised by Collectors when employed in making or revising settlements of the land-revenue, and shall extend to all the lands comprised in the *pargana* in which he may be so employed; but it shall be competent to ¹[the ²Provincial Government, by notification in the ³*Official Gazette*], to be publicly proclaimed in the district, to restrict the authority of Collectors and other officers making settlements in such manner and to such extent as ⁴[it] may from time to time judge expedient.

In like manner it shall be competent to ⁵[the ²Provincial Government] to vest such Collectors as may from time to time be judged fit with a special authority to receive, try and determine in the first instance, subject to a regular suit in the *Adalat* as above provided, all or any of the questions of the nature specified in the aforesaid sections, though the said Collectors may not be engaged in making or revising a settlement of the land-revenue,

and to vest in such of the Collectors as may be thought proper authority (either generally or within such limits as may be from time to time determined) to receive, try and determine by summary process all suits for rent which may be preferred by zamindars, talukdars or other sadar malguzars or farmers of land, or by any person in their behalf, against any dependent talukdar, zamindar, under-renter, raiyat or other under-tenant of whatever denomination, as well as all applications by raiyats and the under-tenants contesting the demand of a sadar malguzar or farmer;

and all complaints preferred by raiyats or other under-tenants of whatever description, against landholders or farmers of land, or their respective agents or representatives, on account of excessive demand or

¹The words "the Government, by an order in Council," in the original text, are to be read as if the words "the Local Government, by notification in the local official Gazette" were substituted therefor—see the Amending Act, 1903 (1 of 1903).

²The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words "*Official Gazette*" were substituted for the words "local official Gazette", *ibid.*

⁴The word "he" in the original text is to be read as if the word "it" was substituted therefor—see the Amending Act, 1903 (1 of 1903).

⁵The word "Government" in the original text, is to be read as if the words "the Local Government" were substituted therefor—see the Amending Act, 1903 (1 of 1903).

⁶The matter printed in italics seems to be obsolete—see foot-note 3 on p. 238, *ante*.

(Sec. 20.)

*undue exaction of rent, whether levied by distraint or otherwise, as well as all suits relative to the adjustment of accounts between landholders and farmers of land or under-tenants of whatever description, with their sureties, or with any agents or persons employed by them in the management of land, or the collection or payment of the rent of land, and to all other matters immediately connected with the demand, receipt or payment of the rent of land, whether malguzari or lakhiraj, or with the rent of orchards, pasture-grounds and fisheries, commonly denominated phalkar, bankar and jalkar, or with any other asset of the land-revenue not included in the sair abolished, together with all complaints of the non-delivery of pattas when demandable under the Regulations, or complaints of the prescribed receipts not being given for actual payment of rent, and generally complains of any deviation from the Regulations, or from the established usage of the country, relative to the matters aforesaid, or any violation of subsisting engagements in disputes respecting the rent and occupancy of land between landholders or farmers of land and their under-tenants of whatever denomination.*¹

Appointment
of Collector
to discharge
above duties,
how notified.

Second.—The appointment of the Collector to the discharge of the above duties, and the extent of the jurisdiction to be assigned to him, shall be notified by proclamation in the district, after such manner as the² [Provincial Government] may direct;

*and, after the publication of notice, all summary suits, actions, applications and complaints of the above nature, and referring to lands or the rents, produce or accessions of land lying within the jurisdiction assigned to the Collector as above, which may be preferred in the Zila³ * Adalat by any sadar malguzar, zamindar, talukdar, farmer, raiyat or other proprietor or under-tenant of land, shall immediately, on being received, be referred for trial to the Collector to whom also all such summary suits depending at the time shall be transferred:*

*Provided also that in such cases parties having suits or complaints to prefer, of which the cognizance may be vested as above in the Collector, shall be at liberty to prefer them to that officer in the first instance.*¹

¹The matter printed in italics seems to be obsolete—see foot-note 3 on p. 238, *ante*.

²See foot-note 1 on p. 218, *ante*.

³The words "or city", which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

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it shall in like manner be competent to the ¹[Provincial Government] to fix, ²[by notification in the ³Official Gazette], the period at which the special powers given as above to a Collector, and the authority to be ordinarily exercised by those officers on the occasion of making settlements, shall cease and determine.

Limitation of time for preferring complaints specified.

Third.—No complaint or application of the nature specified in the amending clauses shall be received by a Collector under the rules of this Regulation, unless the plaint or application shall have been preferred within the period of one year after the cause of action shall have arisen.⁴

21. *In summary suits for rent and the like, wherein special rules have been prescribed for regulating the process of the Courts, the Collectors shall be guided by the same rules, and shall exercise the same powers and authority, as are or may be lawfully exercised by the Zila and City Judges.⁴*

Rules for guidance of Collectors ; their powers.

In other cases falling under their cognizance according to the provisions of this Regulation, the ordinary process for securing the attendance of the defendant or party otherwise impleaded shall be to issue a notice reciting the matter, and requiring the defendant or other party to attend in person, or by representative, at such time and place as may be made choice of by the Collector for conducting the investigation;

should any party fail to attend after being served with a notice of the above description, or should the return of the *nazir* or person employed to serve the notice be, that after diligent search the party or parties cannot be found, proclamation shall be made in writing, to be stuck up at or near the ordinary residence of the party, stating that, after 15 days from the date of publishing the same, the case will be liable to be brought up for trial and judgment; and any party implicated, who, having been served with the notice above described, shall fail to attend or who shall continue to absent himself, will be as much bound by the judgment that may be passed as if he or they had been in attendance to plead.

¹See foot-note 1 on page 218, *ante*.

²The words "by an Order in Council," in the original text, are to be read as if the words "by notification in the local official Gazette" were substituted therefor—see the Amending Act, 1903 (1 of 1903).

³The words "Official Gazette" were substituted for the words "local official Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The matter printed in italics seems to be obsolete—see foot-note 3 on p. 238, *ante*.

(Secs. 22, 23).

22. [Extension of ss. 18 and 19 of Reg. VIII of 1819.] Rep. by the Bengal Rent Act, 1859 (X of 1859).

Collector's
cutcherry
held a Civil
Court.

23. *First*.—It is hereby declared and enacted that, in so far as concerns the summoning and examination of witnesses, the penalties for false testimony, for resistance of process, contempts and all other similar matters connected with cases under cognizance before the Collectors of land-revenue, or other officer, by virtue of the powers vested in them by this Regulation or any ¹[other law] whereby Collectors are vested with judicial powers, their *cutcherry* or office for the time being shall be deemed and held to be a Court of Civil Judicature.

Suits to
contest
Collector's
decisions held
to be appeals
from summary
awards.

Second.—Provided also that the regular suits which may be brought to contest decisions passed by Collectors under the powers vested in them by sections 11, 12, 14, 15, 16, 17, 18, 19 and 20 shall be of the nature of an appeal to Court in its regular jurisdiction from a summary award. It shall not therefore be necessary for the Collector or other officer of Government to be a party in the action.

Collectors
authorised
to execute
their awards.

Third.—Collectors of the land-revenue are hereby empowered to execute all awards made by them under the rules of this Regulation, in cases wherein a specific sum of money shall be adjudged to be due, or any costs or damages be awarded; the Collector decreeing the same shall proceed to levy the amount for the party in whose favour it may be adjudged by the process in use for the recovery of arrears of the Government revenue:

*Provided, however, that he shall not sell any lands, houses or other real property in satisfaction of any judgment passed in favour of any individual on a summary inquiry.*²

In cases wherein possession of lands, houses, water-courses or the like may be adjudged, it may and shall be lawful for the Collector making the award to deliver over possession in the same manner and with the same powers in regard to all contempts, resistance and the like as are or may be lawfully exercised by the Courts in giving possession to an auction-purchaser; and the *Zila*³ * * *Adalats* shall support the Collectors in the exercise

¹These words were substituted for the words "other Regulation" by the Amending Act, 1903 (1 of 1903).

²So much of cl. 3 of s. 23 as prohibits the Collectors from selling land in satisfaction of summary awards for arrears of rent which may have accrued thereon was repealed by Act VIII of 1835, s. 1.

³The words "or city", which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

of 1822.]

(Sec. 24).

of the above power, and shall give effect to any orders passed by them in pursuance of it in the like manner as if the same had been passed by themselves.

Collectors are further hereby empowered to place one or more peons, *mirdahas*, *sawars* or the like to aid in the maintenance of possession for the party to whom it may be awarded, in case of his deeming such a measure necessary or expedient.

24. First.—It shall and may be lawful for a Collector or other officer exercising the powers of Collector preparatory to making or revising a settlement as aforesaid, to depute any *tahsildar*, *kanungo*, *amin* or other fixed or temporary officer to any village or *mahal*, whether the same be managed by a *zamindar* or farmer or be held *khas*, to inquire into the various matters which such Collector or other officer is required to be empowered to investigate, in order to form a settlement in the mode prescribed by this Regulation.

Collectors authorized to depute Native officers to make inquiries preparatory to settlement.

Any such Native officer so deputed as above shall be deemed to be vested with the power of summoning and examining *patwaris*, *gumashtas* or other persons by whom the accounts of the village or *mahal* may be kept, in the same manner and with the same powers as is provided for officers deputed under section 25, Regulation XII, 1817.¹

Furthermore, in case the Collector or other officer may so prescribe the said *tahsildar* or other person shall be empowered to make a measurement of the village or *mahal* into which they may be deputed, and to summon any *mukaddams*, *padhans*, *raiyats* or other residents, and to call upon them to point out the boundaries of such village or *mahal*, and to furnish information as to all matters relating to the land and the rights and interest attaching thereto; and any person contumaciously withholding information from an officer deputed as aforesaid shall be liable, on the same being established to the Collector's satisfaction, to the same penalty as is prescribed for *patwaris* refusing to attend or give evidence.

Second.—Provided also that any person who may by force or threats obstruct or resist the execution of any legal process, requisition or order of a Collector or other Revenue-officer shall, in addition to the penalties prescribed by ²[any other law] for such act, be liable to a

Punishment of resistance or obstruction of process or order of Collector.

¹The Bengal Patwaris Regulation, 1817.

²These words were substituted for the words "the existing Regulations" by the Amending Act, 1903 (1 of 1903).

(Secs. 25—29).

fine not exceeding two hundred rupees, or to imprisonment in the *Diwani* jail for a period not exceeding two months; the said fine or other penalty to be adjudged by the Collector after proceeding duly held and recorded, and the sentence to be immediately reported to the Board to which he may be subject.

Police-officers
to aid
execution of
process and
orders of
Collectors.

Third.—Provided further that all police-officers shall aid and support the execution of all process and orders issued by a Collector or other officer aforesaid, on the responsibility of the officer issuing or executing the same; and, if any affray or breach of the peace shall occur in consequence of any resistance or obstruction being made, or attempted to be made, to the legal process or order of a Collector or other Revenue-officer, the parties resisting or obstructing such process or order shall be punishable for the affray or breach of the peace, and the Revenue-officer shall not be liable to any criminal prosecution on that account.

25. [*Employment of Vakils or Agents by parties in suits before Collectors.*] *Rep. by the Pleaders, Mukhtars and Revenue Agents Act, 1865 (XX of 1865).*

Pleadings
required.

26. No other pleadings shall be required from the parties in ¹[suits the cognisance of which is hereby vested in Collectors] than a plaint and answer:

Provided that, if the parties should at any time wish to file an amended plaint or an amended answer, or any explanatory motion, such subsidiary pleadings shall be received.

27. [*Stamped paper to be used.*] *Rep. by the Repealing Act, 1876 (XII of 1876).*

Collectors
may try and
determine
suits in any
part of their
districts.

28. It shall be competent to the Collectors to hear and determine such suits in whatever part of the district they may occasionally be or reside:

Provided that every hearing and decision be in public *cutcherry* or in some other place open to the public, and in the presence of the parties or of their constituted agents or *vakils*, if in attendance.

Appeal to
Board.

29. *First.*—The decisions of the Collectors on all such suits shall be appealable to the Board of Revenue or other authority exercising the powers of that Board.

¹These words were substituted for the words "such suits" by the Amending Act, 1903 (1 of 1903).

(Sec. 29).

Procedure on such appeals.

**When Board
may direct
new trial or
interpose to
correct neglect
or delay.**

Pleadings required in appeals to Board.

No Mukhtar-nama required for same agents re-employed

**Respondent
to receive
notice, but
not required
to appear.**

Boards' decision how far final.

“The words “and shall be rendered in a Persian *rubkari*, written on stamped paper of the value of ten rupees” have been omitted : the word “Persian” was repealed by the Repealing Act, 1874 (XVI of 1874), and the remaining words were repealed by the Repealing Act, 1876 (XII of 1876).

(Secs. 30, 31.)

But decision of Board and Collector may be contested by regular suit.

Sixth.—Any person, however, dissatisfied with the summary judgment of the Collector or the Board, and desirous of a more full and formal decision, shall be at liberty to prefer a regular suit to try the merits of the case in the *Zila* or other similar or superior Court in which it may be cognizable.

In such cases the summary judgment of the Collector, if not reversed or stayed by the Board, shall be carried into effect notwithstanding the institution of the regular suit.

Parties having claims cognizable by Collectors, and not wishing summary trial, may in first instance bring regular suit.

30. All persons having claims or complaints to prefer of the nature of those made cognizable by Collectors under the provisions of this Regulation, and not wishing to avail themselves of the summary process authorized in that Court, shall be at liberty to institute their claims or complaints, in the first instance, by a regular suit before the local *Munsif*, or in the *zila* ¹ * * * *Adalat* ² * * * , according as the suit may be cognizable in these Courts respectively

On appeal against Collector's decision his proceedings to be on record.

31. First.—Whenever a regular suit may be instituted in a Civil Court, with a view to set aside or alter a summary judgment passed by a Collector the proceedings held on the summary inquiry shall be called for by precept from the Court, and filed on the record of the case.

No such appeal cognizable by, or referable to, any *Munsif*.

Second.—⁴ * * * all ⁵ * * * *Munsifs* shall, in cases tried by them, be held and bound by the decisions passed, and records prepared, by Collectors or other Revenue-officers under the provisions of this Regulation, unless the same shall have been rescinded or altered by the Board or by the *zila* or other similar or superior Court, on a regular suit.

¹The words "or City," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words "or Provincial Court of the Division," were repealed, *ibid.*

³The words "under the general Regulations for the administration of civil justice", were repealed, *ibid.*

⁴The words "Provided also that" are omitted as having been repealed by the Amending Act, 1903 (1 of 1903), and the words "no such suit shall be cognizable by, or referable to, any register, *sadar amin* or *munsif*, and " are omitted as having been repealed partly by Act XXV of 1837 and partly by the Repealing Act, 1874 (XVI of 1874).

⁵The words "registers, *sadaramins* and," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

of 1822.]

(Secs. 32, 33.)

32. The Collectors shall transmit to the ¹[Board] such periodical reports of the causes decided by, or depending before, them as the ¹[Board] may direct, and the ¹[Board] will also furnish ²[to the Provincial Government] such abstracts of those reports, and such reports in the cases received and determined by them in appeal, as the ³[Provincial Government] shall from time to time require.

Periodical
reports by
Collectors to
Boards.

33. *First.*—It shall be competent to Collectors or other officers exercising the powers of Collectors to refer to arbitration any disputes cognizable by them under the provisions of this Regulation, as well as any questions or disputes of any kind respecting land or the tenures therein, or the rights dependent thereon, that may come before them, provided the parties consent to that mode of adjustment, and, on award being made, to cause the same to be executed.

Collectors
authorized to
refer certain
cases to
arbitration.

In referring cases to arbitration under the above provision, and in their general proceedings relative to such suits, the Collector ⁴* * * shall be competent to vest in the arbitrators the same powers and authority in regard to the summoning and examination of witnesses, and the administration of oaths, and to enforce the orders passed by the arbitrators under such powers, in the same manner as the Courts of Judicature are empowered to do; and all awards made on such references shall, when confirmed by the Collector, have the same force and validity as a regular decree of the *Adalat*, and shall not be liable to be reversed or altered, unless the award shall be open to impeachment on the ground of corruption or gross partiality or shall extend beyond the authority given by the submission of the parties; and such ground of impeachment shall be established in a regular suit in the *zila*,
⁵* or other superior Court wherein the case may be cognizable.

Force of
awards passed
on such
reference.

¹This word was substituted for the word "Boards" by the Amending Act, 1903 (1 of 1903).

²These words were substituted for the words "to Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "Local Government" by paragraph 4(1), *ibid*.

⁴The words and figures "shall be guided by the rules contained in Regulation 16, 1793, and the other corresponding enactments and in regulation 6, 1813, in so far as the same may be applicable, and" which were repealed by the repealing Act, 1874 (XVI of 1874), are omitted.

⁵The word "City," which was repealed by the Amending Act 1903 (1 of 1903), is omitted.

(Section 34.)

Matter of arbitrament to be distinctly specified in Collector's proceedings.

Karungos and tahsildars may be employed as arbitrators.

Power of Collectors to interfere in cases of disputed possession ;

and to give possession to one of the contending parties.

Collector may attach disputed lands, etc.

Second.—In referring any dispute to arbitration, the Collector shall be careful to specify in his proceedings, and in the deed of arbitration to be executed by the parties, the precise matter submitted to the arbitrators; and, if the award first made by the arbitrators shall not include all the matters submitted to them, or shall be otherwise ~~invalid~~ it shall be competent to the Collector again ~~refer~~ the matter to them, with directions to

Third.—The *pargana karungos and tahsildars* may be appointed arbitrators in any case referred to arbitration under the above rules; anything in the existing Regulations notwithstanding.

34. First.—When a Collector or other officer exercising any of the powers vested in Collectors by the rules of this Regulation, relative to complaints of dis-possession or disturbance of the possession of lands or premises, shall learn, either by a reference from the Magistrate, or by a report from any other public officer or otherwise, that any disputes exist within the tract placed under his jurisdiction, relative to any lands, premises, crops, orchards, pasture-grounds, fisheries, wells, watercourses, tanks, reservoirs or the like, likely to terminate in a breach of the peace, it shall and may be lawful for the Collector or other officer aforesaid to require the contending parties to attend in person or by representative at a stated time and place, and, after investigating the case in the presence of the parties or their representatives, or such of them as may attend, or referring it to arbitration as above prescribed, to decide the case in the same manner as if it had been brought before him by the complaint of one of the parties :

Provided also that, if the fact of previous lawful possession cannot be ascertained, it shall be competent to the Collector, subject to the orders and direction of the Board, to decide on the question of right, and to give possession to one of the contending parties, leaving the other party to contest the decision by a regular suit in Court; but no such decision shall be passed by any Collector until he shall have instituted a careful inquiry into the fact of possession, and the Board shall be careful to see that this restriction is observed :

Provided further that in such cases it shall be competent to the Collector to attach the disputed lands, premises, etc., as aforesaid, and to appoint an officer to the management of the same, retaining in deposit the rents and produce or such portion thereof as may

of 1822.]

(Sec. 35.)

remain after discharging any public revenue demandable therefrom, with the charges of management, until one of the contending parties shall be placed in possession.

Second.—Whenever any Magistrates or Joint Magistrates shall have before them any suit, complaint or information relative to any dispute regarding lands, premises, crops, watercourses or the like, which may appear likely to terminate in a breach of the peace, or which it may otherwise be desirable to bring to an immediate decision, it shall be the duty of such Magistrate or Joint Magistrate, in cases in which the Collector shall be vested with the cognizance of such actions, to certify the case to that officer, and the Collector will then forthwith proceed to investigate and determine the case under the rules above prescribed:

Reference of disputes by Magistrates to Collector.

Provided also that, in all cases of forcible dispossession or forcible disturbance of possession, the Collector shall invariably transmit to the Magistrate or Joint Magistrate a copy of the first proceeding held by him in the case, and also a copy of the *rubakari* containing his final award.

Third.—The Collector shall in all such cases use every proper means for inducing the parties to refer their disputes to arbitration, in like manner as the *Diwani* Courts are directed to do.

Collector to encourage arbitration.

35. Whenever the term "Board of Revenue" * * may occur in this or any other Regulation, the same shall be held and considered to apply to any Board, committee or commission, and to any member of such Board, committee or commission, that may be vested by the ²[Provincial Government] with the powers and authority of the Board of Revenue, save and except in so far as may be otherwise specially declared and provided.

"Board of Revenue."

In like manner, all rules in this or any other Regulation, whereby any duties or powers may be prescribed for, or vested in, Collectors shall be held and considered to be equally applicable to any officer exercising the authority of Collector under the orders or with the sanction of the ³[Provincial Government].

Rules regarding Collectors to apply to officer exercising authority of Collector.

¹The words "or Board of Commissioners," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

²These words were substituted for the words "Governor General in Council" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³See foot-note 3 on p. 247, *ante*.

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Bengal Regulation XI of 1822.

(The Bengal Government Indemnity Regulation, 1822.)¹

(22nd November, 1822.)

*A Regulation * * * for declaring Government not to be liable for any errors or irregularities in the proceedings of the Courts of Justice, and for making further provision for the conduct of the Revenue-officers in certain cases.*

1. [*Preamble.*] *Rep. by the Bengal Land-revenue Sales Act, 1841 (XII of 1841).*

2. [*Repeals.*] *Rep. by the Amending Act, 1903 (I of 1903).*

3 to 35. *Rep. by the Bengal Land-revenue Sales Act, 1841 (XII of 1841).*

36. If a Collector shall at any time, being so instructed by either the Government or the Board, purchase on account of Government an estate exposed to sale for the recovery of arrears of revenue, the rules applicable to the management of ordinary *malguzari mahals* held *khas* or farmed shall be considered applicable to such estate, and also to all other estates the property of Government, according as they may be held *khas* or let in farm.

Rules for *khas* management applied to purchases by Government.

37. [*Collector's power to punish for contempt.*] *Rep. by the Bengal Land-revenue Sales Act, 1841 (XII of 1841).*

38. It is hereby declared and enacted that ³[the Crown] is not and shall not be held liable for any error or irregularity which may have occurred, or shall,

Crown not liable for errors of Courts.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—Ss. 36 and 38 of this Regulation have been declared by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

Ss. 36 and 38 have been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of ss. 36 and 38 is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4 (2).

²The words "for modifying and explaining the existing Regulations relative to the sale of land for the recovery of arrears of revenue," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Reg. XI of 1822.]

(Sec. 39.)

occur, in any order, proceeding or decree of any Court of Judicature, whether a revenue or other officer of ¹[the Crown] may or may not have been, or shall or shall not be, employed in giving effect to the order, proceeding or decree deemed to be erroneous or irregular.

Nor shall any officer of ¹[the Crown] be held liable for anything done or suffered in conformity with an order, proceeding or decree of a Court as aforesaid; and if any person or persons shall sue ¹[the Crown] or any officer of ¹[the Crown] for anything done or suffered under an order, proceeding or decree of Court as aforesaid, such person or persons shall be non-suited, with costs.

The same principle is and shall be held applicable to all orders, proceedings or decrees made, held or passed by any public officer, in virtue of powers vested in him for the judicial cognizance of any pleas, suits, complaints or informations whatsoever, unless otherwise specially provided.

39. [*Saving of Ben. Reg. 1 of 1821.*] *Rep. by the Bengal Land-revenue Sales Act, 1841 (XII of 1841).*

¹These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Regulation VI of 1823.

(The Bengal Indigo Contracts Regulation, 1823.)¹

(10th July, 1823.)

A Regulation for authorizing the institution of summary suits to enforce the execution of certain written engagements for the cultivation and delivery of the indigo-plant, and for declaring certain principles in regard to the same.

1. The poverty of the lower orders in India, and particularly of those employed in agriculture, occasions the general use of borrowed capital for the production of the chief articles of trade and consumption. Preamble.

The capitalist advances his money, and sometimes the seed likewise, upon a contract to receive the produce of a defined quantity of land, either at a certain fixed price, or at rates to be subsequently determined with reference to the market price at a specified season; and this system is understood generally to prevail in the Province of Bengal in the cultivation of the plant from which the indigo-dye is extracted.

According to the existing Regulations, if the contracting *raiyat* should fail to cultivate the land in the manner specified, or, having so cultivated the land, should sell the produce to another, or otherwise defraud his creditor, and fail to execute his contract by delivery of the stipulated article, the person with whom he has so contracted has no other remedy than a regular action for the recovery of the penalty conditioned in the agreement.

It is usual for the Courts of Justice, in decreeing such causes, to award such limited penalty as may, in each instance, appear to be a fair compensation to the person making the advances for the non-employment of his capital.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was enacted for the whole of the former Province of Bengal—see the concluding paragraph of s. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

(Sec. 2.)

In the absence, however, of any rule for the regulation of the discretion thus assumed, much confusion has arisen from the conflicting opinions and judgments of the several judicial officers as to the extent of penalty recoverable on agreements of this nature.

It seems reasonable, also, that the person who advances seed and capital, or capital only, for the expenses of cultivation on a defined parcel of land, should be considered to possess a lien and interest in the indigo-plant produced, on that land, when so stipulated in a written engagement between the parties and especially in cases in which such written engagement may have been duly registered * * * * *; and that it should not be in the power of a *raiyat*, who has already conditioned for the delivery of the produce of his land to one person, to break the condition by a clandestine and fraudulent transfer of such produce to another.

The system at present in force provides, as above observed, no other remedy for parties injured by this dishonest practice than by a regular action in the Civil Court.

The difficulty and delay of obtaining redress by that course have not unfrequently led to acts of violence, and even to serious affrays; and the more frequent occurrence of such affrays is to be apprehended in consequence of the eager competition which now prevails amongst the indigo-manufacturers in some parts of Bengal, arising from the unusually high price of indigo.

The Governor General in Council has in consequence judged it expedient to declare the principles on which the points above stated shall be settled, and to provide for the more prompt adjustment of disputes and enforcement of contracts of the nature above specified; and the following rules have accordingly been passed, to take effect in the several districts comprised within the Province of Bengal from the date of their promulgation.

2. If any person shall have given advances to a *raiyat*, or other cultivator of the soil, under a written engagement, stipulating for the cultivation of indigo-plant on a portion of land of certain defined limits, and for the delivery of the produce to himself, or at a specified factory or place, such person shall be considered

When persons making advances for cultivation of indigo-plant on certain land have lien on, or interest in, its produce.

¹Portion repealed by the Amending Act, 1891 (XII of 1891), is omitted.

²The words and figures "under the provisions of Regulation 20 of 1812," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

of 1823.]

(Sec. 3.)

to have a lien or interest in the indigo-plant produced on such land, and shall be entitled to avail himself of the process hereinafter provided for the protection of his interests and for the due execution of the conditions of the contract.

3. *First*.—If any person, who may have made advances on conditions of the nature above described, shall have just reason to believe that an individual under engagement with him is evading or is about to evade the execution of his contract, by making away with and disposing of the produce otherwise than as stipulated, or that he has engaged secretly or openly to supply the same to another, it shall be competent to such person to present a petition of complaint to the Zila¹ * Judge² * * * * * within whose local jurisdiction the land stipulated to be cultivated with the indigo-plant may be situated, filing with the same the original deed of engagement by which the produce may be assigned and engaged to be delivered to himself or at his factory, and certifying in his petition that such deed was voluntarily and *bonâ fide* executed by the individual complained against.

Such person how to proceed when he has just reason to believe that *raiyat* will dispose of produce otherwise than stipulated.

Second.—On such petition and original deed of engagement being filed, a summons, or *talab chitthi*, shall be immediately issued through the *nazir* in the usual form, requiring the individual named in the petition to attend and answer to the complaint, either in person or by an authorized agent, within such specified period as may in each instance appear reasonable, and which period shall in no case exceed twenty days.

Summons for attendance of defendant.

Third.—The officer entrusted with the execution of the process shall also be instructed to affix a copy of the summons in the village *cutcherry* or other place of public resort, and to erect a bamboo on the specific parcel of ground on account of which the claim may have been preferred, and which it shall be the duty of the plaintiff or his agent to point out.

Summons how served ;

By these means sufficient public notice of the claim will be given to enable persons desirous of contesting the plaintiff's right, or of establishing a prior right to the produce of the land, to appear either in person or by an authorized agent before the Court for that purpose, and the failure so to attend, before the summary decision be passed, will be held to bar the claim of any third

and public notice of claim how given.

¹The words "or City" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words "or to a registrar exercising the powers of a Magistrate" were repealed, *ibid*.

(Sec. 3.)

party founded on any contract for the produce of the land in question, unless it be established by a regular suit.

On non-appearance of defendant or other claimants, evidence to be taken, and case decided *ex parte*.

Fourth.—If the officer serving the process shall not be able to execute it on the person of the defendant, he shall nevertheless publish the claim in the manner above directed, and if the defendant shall not appear to answer to the complaint within the period specified in the summons, and no other claim be referred in bar of that of the plaintiff, the Judge * * shall, after taking evidence to establish the deed and other allegations of the plaintiff, proceed to the adjudication of the claim, in the same manner as if the defendant had personally appeared.

In what cases award shall be passed, adjudging plaintiff's right to produce.

Fifth.—If the defendant or his authorized agent should attend within the period specified, and should deny the execution of the deed of engagement filed by the complainant, proof of the same shall be taken; and if its voluntary execution be established to the satisfaction of the Court * * * and no preferable claim be established by a third party, a summary award shall be made, adjudging to the plaintiff the right of receiving the crops according to the terms of the agreement.

The same principle shall be applied if the engagement be admitted and no satisfactory reason be shown why the defendant should not be held to the performance of his contract.

If claim be not established, plaintiff to pay costs and compensation to defendant.

Sixth.—If it be proved that the engagement was not duly and voluntarily executed by the defendant, or if it should appear that the proceeding is otherwise litigious and oppressive, and the claim unfounded, or that the plaintiff had no sufficient cause to warrant his application to the Court, the complaint shall be dismissed, and the plaintiff shall be made liable to the payment of costs and such reasonable sum in addition as may seem to the Judge * * * a proper compensation to the defendant for any trouble and annoyance to which he may have been subjected.

Notice to third parties in what cases, and their claims how investigated.

Seventh.—If it should appear in the course of the inquiry that the defendant is under engagement for the same land to a third party, notice shall immediately be issued for that party to appear and plead, either in person or by *vakil*; and if such person or any third

*The words "or other officer" which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

*The words "or other tribunal trying the case" were repealed, *ibid*.

of 1823.]

(Sec. 4.)

party shall, previously to the decision of the case, come forward and produce a similar deed of engagement, stipulating for the produce of the same portion of land, the Judge * * * shall, after such summary investigation as may be necessary, determine whether either of the parties have any just claim to the produce of the land, and, if so, which of them may have the prior and better claim; a preference will of course be given to engagements duly registered * * *.

The result of such investigation shall be recorded, and a decree passed adjudging the question of right between the parties.

Eighth.—No defendant who may attend under the process described in this section shall be confined in jail, or be in any manner detained, longer than may suffice to take his answer to the claim and to obtain from him such further explanations as the nature of the answer may suggest.

Defendant not to be subjected to unnecessary detention.

Ninth.—If, pending the summary inquiry in the manner above directed, it shall appear that the plant on the ground is in a state fit to be cut, and will be injured or destroyed if not cut, it shall in such case be competent to the Judge * * * to pass an order for the delivery of the plant to either of the parties provided that the said party consents and engages to pay to the other claimant (if the summary award should be ultimately in favour of the latter) a specific pecuniary compensation;

In what order may issue to deliver plant to a party, before summary inquiry completed.

the amount of such compensation shall be fixed by the Judge * * * in communication with the parties, and shall be regulated with reference to the estimated produce of the ground, and to the probable value of such produce when manufactured; and the amount, when so fixed, shall be carefully recorded on the proceedings.

4. *First.*—Any person in whose favour a summary award shall have been passed for the produce of any defined spot of land shall be entitled to place a watch over the same, and to prevent the cutting and removal of the plant in any manner contrary to the stipulations of his agreement;

Authority to watch fields and to prevent removal of plant given to parties in certain circumstances.

¹The words "or other officer trying the case," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

²The words and figures "under the provisions of Regulation 20, 1812," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

³The words "or other person trying the case" which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

(Sec. 5.)

and, in the event of any attempt being made to cut or remove the plant, it shall be competent to the person holding the decree to apply to the nearest police *daroga* and to claim from him the assistance of the police in preventing such removal;

it shall, moreover, be the duty of the police-officers and of all other officers on such a decree being exhibited, to aid the person in whose favour it may have been passed to the utmost of their power.

Security for
rent due to
landholders
how provided.

Second.—In order that the foregoing rule may not operate to the prejudice of the landholders, who * * * are authorized to attach the crops for the realization of rents justly due to them, it is hereby provided that, whenever any manufacturer, who may have obtained an award under the foregoing rules, may cause the plant to be cut and taken away, he shall be held responsible, conjointly with the *raiyat*, for any arrear of rent which may have been due on account of the specific parcel of ground from which the indigo-plant may have been taken.

Suits by
parties injured
by breach of
contract in
regard to
cultivation and
delivery of
indigo-plant.

5. *First.*—In cases in which a *raiyat* who may have received advances and entered into written agreements for the cultivation and delivery of indigo-plant, in the manner indicated in this Regulation, shall have failed to cultivate the ground specified, or, having cultivated it, shall have failed or refused to complete his engagement, or shall have sold, made away with, or transferred the produce to another person, the party with whom such agreement was first made shall be at liberty to institute, at his option, either a summary or a regular suit.

Judgment to
what extent
in summary
suits.

Second.—If the summary process be adopted and the cause be decided in favour of the plaintiff, the defendant shall be subjected to the payment of the amount of the advances actually received by him, with interest on the same, and the costs of the summary process.

Third.—[*Judgments in regular suit.*] *Rep. by the Bengal Indigo Contracts Act, 1836 (X of 1836).*

Penalty in
regular suits
where breach
of contract not
ascribable
to fraud or
dishonesty.

Fourth.—If no fraud or dishonest dealing be established, and the failure of a *raiyat* or other contractor to execute the stipulations of his engagement by the delivery of indigo-plant in the manner stipulated be owing to accident, or to any cause not implying fraud or dishonesty, the penalty to be adjudged against a contractor shall not exceed three times the sum advanced as the consideration for executing the deed, including interest.

*The words "by the existing Regulations," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

of 1823.]

(Secs. 6—8.)

6. ¹ * * investigations under this Regulation shall be conducted according to the form and in the manner prescribed for the conduct of ¹ * * suits for arrears of rent ² * * *. It shall ² * * be competent to any person whose claim under a deed of engagement for the cultivation and delivery of indigo-plant may have been set aside ³ * * *, or who may be otherwise dissatisfied with the decision passed on ¹ * * “[an investigation] under the foregoing provisions, to institute a regular suit for the recovery of the penalty stipulated in the deed of engagement, or for the establishment of any other claim or interest to which he may deem himself entitled.

Investigations
how and by
whom conducted.

7, 8. [*Stamp on contract concerning indigo-plant; such contract may include several individuals and separate transactions.*] *Rep. by the Court-fees Act, 1870 (VII of 1870).*

¹The word “summary” which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

²Words repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words “by a summary award” which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴These words were substituted for the words “a investigation” by the Amending Act, 1891 (XII of 1891).

Bengal Regulation VII of 1823.

[The Indian Civil Service (Bengal) Loans Prohibition Regulation, 1823.]¹

(30th October 1823.)

A Regulation for prohibiting loans by covenanted Civil Servants from persons subject to their official authority and influence.

1. Whereas by the existing Regulations all covenanted Civil Servants of the Company, employed in the judicial and revenue departments of the service, are prohibited from lending money, directly or indirectly, to any proprietor or farmer of land, dependent *talukdar*, under-farmer or *raiyat*, or their sureties; and whereas it is equally necessary to prohibit the public officers from borrowing money from persons subject to their official authority and influence, the following rules have been enacted by the Governor General in Council, and are to be in force from the date of their promulgation throughout the provinces immediately subject to this Presidency. Preamble.

2. *First*.—All covenanted Civil Servants, in whatever department of the public service they may be employed, are henceforward prohibited, under pain of dismissal from office, from borrowing money from, or in any way incurring debt to, any Native officer under their authority, or under the authority of any of their subordinate functionaries, or from or to the known surety, agent, relation, connection or dependant of any such Native officer, or from or to any person of whom such Native officer may be known to be or to have been the servant, agent, surety or dependant. Civil Servants prohibited from borrowing money from Native officers under their authority, etc. ;

Second.—In like manner, and under the like penalty, all officers of Government, being covenanted Civil Servants, are henceforward prohibited from and from other persons officially accountable to them.

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see s. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri and the Western Duars, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4 (2).

(Secs. 3—6.)

borrowing money from, or in any way incurring debt to, any manager, guardian, executor, *amin*, *sazawal*, *gumashtha*, farmer, *mutawalli* or other person, who may in any way be officially accountable to them, or from and to the known surety, agent, relation, connection or dependant of such person.

Third.—[*Rules applied to commercial officers.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

Certain officers prohibited from incurring debt to zamindars and others residing, or having property, within their districts.

3. ¹[All Commissioners, District and Sessions Judges, Deputy Commissioners and Assistant Commissioners, being members of the Indian Civil Service], are prohibited, under pain of dismissal from office, from borrowing money from, or in any way incurring debt to, any *zamindar*, *talukdar*, *raiyat* or other person possessing real property, or residing in, or having a commercial establishment within, the city, district or division to which their authority may extend.

Penalty for lending money to Civil Servants.

4. All persons are prohibited from lending money, or otherwise becoming in any way creditor, to any officer of ²[the Crown], being a covenanted Civil Servant, in contravention of the above rules: and any person lending money, or in any way becoming creditor, to any such public officer in breach of this prohibition shall forfeit to ³[the Crown] a sum equal to the amount for which he shall have so illegally become creditor.

5. [*Report by officers in debt.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

Penalty for officers receiving new appointments, if indebted to individuals contrary to above rules, omitting to report.

6. * * * if any covenanted servant who may be hereinafter appointed to any office, shall at the time of such appointment be indebted to any person with whom it would be illegal for him to contract a loan, while holding such office, it shall be incumbent on such servant, before entering on the duties of the office, to make known the circumstance to the ⁴[Provincial Government]; and, failing to do so, he shall be subject to the same penalty as if the debt had been contracted subsequently to his being appointed to the said office.

¹These words were substituted for the original words by the Amending Act, 1897 (V of 1897).

²These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words "In like manner," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁴These words were substituted for the words "Local Government" by paragraph 4 (I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1823.]

(Secs. 7, 8.)

7. [*Penalty on Natives knowingly taking office in contravention of above rules.*] Rep. by the Amending Act, 1903 (I of 1903).

8. Suits for the recovery of penalties incurred under this Regulation shall and may be instituted under the special instructions of the ¹[Provincial Government], and shall be conducted by the Superintendent and Remembrancer of Legal Affairs, or by such other officer as ²[the Provincial Government] may nominate for that purpose.

Suits for recovery of penalties.

Such suits shall be instituted in the * * Court of the division within which the transaction may have taken place, or the lender may reside or may possess real or personal property.

An appeal shall lie from judgments passed in such cases, in like manner as from other judgments passed in original suits * * *; and the judgments shall be enforced under the provisions * * * for the execution of other decrees of the Civil Courts.

¹These words were substituted for the words "Local Government" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words "the Local Government" were substituted for the word "Government" by the Amending Act, 1897 (V of 1897), and the words "Provincial Government" were substituted for the words "Local Government" by paragraph 4 (I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The word "Provincial" which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

⁴The words "by the Provincial Courts" were repealed, *ibid.*

⁵The words "of the Regulations" were repealed, *ibid.*

Bengal Regulation VI of 1825.

(The Bengal Troops Transport Regulation, 1825.)¹

(4th April 1825.)

A Regulation for rendering more effectual the rules in force relative to supplies and preparations for troops proceeding through the British territories.

1. Whereas it is enacted in the first clause of sec-Preamble, tion 3, Regulation XI, 1806,² that, on receiving the notification mentioned in the preceding section relative to a body of troops about to proceed, by land or by water, through any part of the Company's territories, the Collector of the district shall immediately issue the necessary orders to the landholders, farmers, *tahsildars*, or other persons in charge of the lands through which the troops are to pass for providing the supplies required and for making any requisite preparation of boats or temporary bridges, or otherwise for enabling the troops to cross such rivers or *nalas* as may intersect their march without impediment or delay; it being at the same time further directed, in the second clause of the section referred to, that the supplies so furnished shall be paid for by the persons receiving the same at the current *bazar* prices of the place at which they may be provided, and that the expense incurred for crossing the troops and their baggage over rivers or *nalas*, after being duly ascertained, will be paid by Government ;

and whereas experience has shown the necessity of enabling the Collectors or other public officers acting in that capacity to enforce their orders in the cases above-mentioned, by imposing a fine upon any landholder, *tahsildar* or other person in the possession or

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of s. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri and the Western Duars, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4 (2).

²The Bengal Troops Transport and Travellers' Assistance Regulation, 1806.

(Sect. 2, 3.)

management of land, who, after receiving the requisition issued in pursuance of the section above cited, may be proved to have wilfully disobeyed or neglected the same;

the Governor General in Council has therefore enacted the following rules, to be in force as soon as promulgated in all the Provinces immediately subject to the Presidency of Fort William.

Penalty for
zamindars not
providing
supplies for
troops, etc.

2. Any landholder, farmer, *tahsildar* or other person in the possession or management of land, who may have been duly required by a Collector of the land-revenue (or any public officer acting in that capacity), in pursuance of section 3, Regulation XI, 1806,¹ to provide supplies for a body of troops about to proceed by land or water through any part of the British territories or to make preparations of boats, temporary bridges or otherwise, for enabling the troops to cross rivers or *nalas* intersecting their march, and after the receipt of such requisition shall wilfully disobey or neglect the same, or shall without sufficient cause fail to exert himself for the due execution of the duty so assigned to him, shall, on proof of such failure, neglect or disobedience to the satisfaction of the Collector (or other officer acting in that capacity) by whom the order may have been issued, or of his successor in the same office, be liable to a fine proportionate to the defaulter's condition in life and the circumstances of the case, in such amount as the Collector or other officer, with due regard to these considerations, may judge it proper to impose, so that the fine shall not in any case exceed the sum of one thousand * * * rupees.

Collector to
make summary
inquiry.

3. The Collector or other officer acting in that capacity, who may exercise the powers vested in him by this Regulation, shall previously make a summary inquiry, in the presence of the party charged with disobeying or neglecting the order issued to him, or of his representative, if, on being duly summoned, he shall attend in person or by *vakil* for that purpose.

If he shall fail to attend, either in person or by *vakil*, the summary inquiry shall be conducted *ex parte*, and the Collector shall record upon his proceedings the whole of the evidence obtained in proof of the neglect or disobedience for which a fine may be imposed.

¹The Bengal Troops Transport and Travellers' Assistance Regulation, 1806.

²The word "*sicos*" which was repealed by the Amending Act, 1903 (I of 1903), is omitted.

of 1825.]

(Secs. 4, 5.)

4. The Collector or other officer who may adjudge a fine under this Regulation shall be competent to levy the amount by the same process as is authorized for the recovery of arrears of the public revenue:

Fine how levied.

Provided that if an appeal be preferred from his decision, within six weeks from the date of it, to the Board of Revenue, * * * and sufficient security be tendered for performing the judgment of the Board upon the appeal, the Collector shall stay the execution of his order for levying the fine imposed by him, until he shall receive the final order of the Board.

Proviso as to appeal.

5. Appeals from the orders of Collectors or other public officers, adjudging fines under this Regulation, may be preferred * * * either immediately to the * * Board, or through the officer by whom the fine may have been adjudged; and, on admission of the appeal, the whole of the proceedings in the case shall be transmitted to the Board.

Petition of appeal against fines.

But no such appeal shall be receivable after the expiration of six weeks from the date of the judgment, without proof of sufficient reason for the delay, to the satisfaction of the Board * * * .

Limitation of appeal.

¹The words "in whose jurisdiction the district may be situate," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²The words "on the stamped paper prescribed for other appeals to the Revenue Boards," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

³The word "proper" which was repealed by the Amending Act, 1903 (I of 1903), is omitted.

⁴The words "by whom the case may be cognizable" were repealed, *ibid.*

Bengal Regulation IX of 1825.

(The Bengal Land-revenue Settlement Regulation, 1825.)¹

(5th May 1825.)

A Regulation for extending the operation of Regulation VII, 1822,² for authorizing the Revenue-authorities to let in farm estates under temporary leases, on the default of the malguzars, or to hold the same khas for a term of years; for modifying and adding to the rules contained in Regulation II, 1819³; and for making certain other amendments in the existing Regulations.

1. Whereas the provisions of Regulation VII, 1822², are in force only [*within the Ceded and Con- Preamble.*
quered Provinces, in the district of Cuttack, and] in the *pargana* of Pataspur and its dependencies;

And whereas there are within the other Provinces belonging to this Presidency various *mahals* and tracts for which a permanent settlement has not yet been concluded, and it appears to be advisable that the Revenue-authorities should be vested, in regard to such *mahals* and tracts, with the same powers as belong to the like officers within the Ceded and Conquered Provinces;

And whereas the principle of the rules contained in the said Regulation, relative to lands held free of assessment, or at a *mukarrari jama* under special grants, is equally applicable to such tenures in all parts of the country; and it appears to be likewise expedient to make provision for the occasional exercise, by the Revenue-officers in the Lower Provinces, of the powers

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of s. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

²The Bengal Land-revenue Settlement Regulation, 1822.

³The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

(Sec. 2.)

specified in the said Regulation, for the summary trial of certain suits between individuals, subject as therein provided to an appeal to the *Adalat* by a regular suit;

And whereas, a frequent recourse to the sale of lands for the recovery of arrears of revenue in districts of which the assessment has not been fixed in perpetuity being inexpedient, it appears to be necessary and proper that the Revenue-authorities should be empowered to let in farm for a term of years the estates of defaulters under temporary leases, or to hold the same *khas* for the purpose of making a *raiayatwar* settlement, where that measure may be deemed advisable;

And whereas it has appeared to be expedient to modify and to add to the provisions contained in Regulation II, 1819¹; * * * * *

The following rules have been enacted, to be in force from the date of their promulgation, within the Provinces belonging to the Presidency of Fort William.

Provisions of Regulation VII, 1822, extended to lands not within limits of permanently-settled estates.

2. *First*.—The provisions contained in clause *Sixth*, section 2, and in the thirty-three following sections of Regulation VII, 1822², are hereby extended to all lands (including *jagirs*, *mukarraris* and other tenures held free of assessment or at a quit-rent under special grant) not included within the limits of estates for which a permanent settlement has been concluded in the manner prescribed by Regulation VIII, 1793³, * * * as far as the same may be applicable.

To be in force in estates held *khas*;

Second.—The said provisions shall likewise be in force in all estates which may now or hereafter be held *khas*, during the period for which they may be so managed.

and applicable to Sundarbans, etc.

Third.—The provisions aforesaid shall also apply to the Sundarbans, [*the hill lands of Bhagalpur*,] and other extensive forests and wastes, not included within the limits of *parganas*, *manzars* or other revenue divisions, specified at the time of settlements as belonging to the *mahals* then assessed, as well as to all estates bordering on such forests or wastes.

¹The Bengal Land-revenue Assessment (Revised Lands) Regulation, 1819.

²Portion of the preamble which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

³The Bengal Land-revenue Settlement Regulation, 1822.

⁴The Bengal Decennial Settlement Regulation, 1793.

⁵The words and figures "and Regulations 2 and 22, 1798," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

of 1822.]

(Secs. 3, 4.)

3. It shall be competent to the ¹[Provincial Government] to vest any Collector or other officer exercising the powers of Collector within the Provinces of Bengal, [Bihar ²or Orissa] ³* * * with the several powers specified in section 20, Regulation VII, 1822,⁴ in the manner specified in the second clause of that section, within such local limits as may, from time to time, appear to be advisable; and the several provisions contained in section 21 and the fourteen following sections shall apply to the several *parganas* or other local divisions so placed under the jurisdiction of the Collector or other officer aforesaid.

Power to vest Collector, etc., with powers specified in section 20, Regulation VII of 1822.

4. Whenever an arrear of revenue shall accrue on account of any *mahal* for which an engagement may have been taken by the proprietors or persons recorded as proprietors, not being an estate of which the assessment has been fixed in perpetuity, and the *malguzars* shall fail to discharge the same within one month of the date on which it became due, then, if there shall appear to be any objection to the sale of the estate, and the arrears cannot otherwise be recovered (on which points the decision of the Revenue-authorities is to be held conclusive), it shall be competent to the Collector or other officer exercising the powers of Collector, with the sanction of the Board, ⁵* * * * * to annul the existing engagements with the *malguzars*, and to let the *mahal* in farm for such period, not exceeding fifteen years, as the ⁶[Board of Revenue] may appoint, or to hold the *mahal* under *khas* management for a like period.

Procedure when arrear of revenue on account of *mahals* not permanently assessed is not paid within one month after due date, and objections appear to public sale.

In such cases, if the *mahal* shall yield a higher *jama* than that for which the *malguzars* may have engaged, the excess shall in the first place be appropriated to the liquidation of the arrear due on account of it, or such portion thereof as the farmer may not have separately agreed to discharge or as may not otherwise have been recovered; and, out of any surplus remaining, the *malguzars* shall receive such *malikana*, not being less than

¹These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The word "or" was inserted by the Amending Act, 1903 (I of 1903).

³The words "and Benares," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁴The Bengal Land-revenue Settlement Regulation, 1822.

⁵The words "and subject to the orders of Government" were omitted by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

⁶These words were substituted for the words "Governor General in Council", *ibid.*

(Sec. 5.)

five *per cent.* nor more than ten *per cent.* on the assessment of the last year of their engagement, as the ¹[Provincial Government] may direct.

Modification
of Regulation
II of 1819.

Collector
making settle-
ment to issue
notification
and require
appearance of
persons holding
lands free
of assessment ;

5. *First.*—The following rules are enacted in modification of sections 5, 6, 8, 10, 11, 13, 15, ²[and 22] of Regulation II, 1819³.

Second.—Whenever a Collector or other officer exercising the powers of Collector shall visit, or be about to visit, any *mahal* for the purpose of making a settlement in the manner prescribed in Regulation VII, 1822,⁴ it shall be competent to him, by a notification to be stuck up in some conspicuous place within such *mahal*, and each village thereof, if consisting of several villages, to require all persons holding lands free of assessment or at a fixed *jama*, within or adjoining to the village or villages in which the lands of such *mahal* or any part thereof may be situate, to appear before him either in person or by *vakil* within a reasonable time, not being less than one month from the date of such notification, at such place within the *mahal* as he may select for holding his office, and to attend him from day to day while he may continue within the *mahal*, with all *sanads* or other writings in virtue of which they may possess the lands, or under which the lands may have been, or may be claimed to be, held free of assessment or at fixed *jama*, together with any evidence they may desire to have taken in support of their claims.

may cause
lands to be
measured ;

Third.—It shall likewise be competent to Collectors and other officers aforesaid, when engaged in the settlement of any *mahal* under the rules of the Regulation above-mentioned or preparatory thereto, to measure or cause to be measured, without a previous reference to the Board of Revenue, all lands, whether *malguzari* or *lakhiraj*, belonging or adjoining to the village or villages in which such *mahal* or any part thereof may be situated.

to give public
notice one day
previous to
that on which
it is intended
to hold
proceedings.

Fourth.—When the Collector or other officer aforesaid shall have commenced the settlement of any *mahal* in regard to which he may have issued a notification as aforesaid, and shall propose to hear the claims of persons holding lands free of assessment or at a fixed *jama*, and to receive their *sanads* and other writings as aforesaid or any of them, the period fixed in the notification

¹See foot-note 1 on p. 271, ante.

²This word and figure substituted for the figures and word "22 and 30" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

³The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

⁴The Bengal Land-revenue Settlement Regulation, 1822.

of 1825.]

(Sec. 5.)

for the attendance of such parties being arrived, he shall, on the day preceding that on which he may intend to hold proceedings in the said cases or any of them, notify such intention by an *istahar* stuck up in his office and in some place open to the public within the *mahal*.

Fifth.—If any person holding land free of assessment or at a fixed *jama* as aforesaid shall fail to attend either in person or by *vakil*, after notice being given in the manner above prescribed, the Collector shall be competent to proceed *ex parte* to investigate the title of such party to hold the land in his possession free of assessment, and with the sanction of the Board of Revenue to resume the said lands, if they appear to be held on an invalid title.

Procedure on failure of persons to attend after notice.

Nor shall any person defaulting as above, or neglecting to appear and give answer when required to do so, in the manner prescribed in Regulation II, 1819¹, be entitled to stay the resumption and assessment of his lands under the rule contained in section 22 of that Regulation:

Provided, further, that the rule contained in clause *Second*, section 13, Regulation II, 1819,¹ shall be and be held applicable to such persons, as well as to persons who may appear when summoned under the provisions of that Regulation, or in the manner hereinbefore provided.

Sixth.—It shall be competent, to Collectors and other officers making settlements as aforesaid either to complete the investigation of the claims of persons holding land free of assessment or at a fixed *jama*, under the rules of the 15th and following sections of Regulation II, 1819¹, with the modifications hereinafter provided, during the progress of the settlement, or to limit their proceedings to the ascertainment of the land actually held under such tenures, and the record of the title-deeds produced by the parties, postponing the further investigation of the case to a future period.

Collector may either complete investigation of claims or limit proceedings to certain points.

When any Collector or other officer may postpone the investigation of any case as aforesaid, he shall at the same time notify to the party the time and place at which the further investigation is to be held, or, if circumstances prevent him from doing so, he shall, before resuming the inquiry, give the party one month's notice to attend, and, on the failure of any party to attend when so warned, the Collector or other officer aforesaid shall be competent to proceed to try the case

¹The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

(Sec. 5.)

ex parte, and, with the sanction of the Board, to resume and assess the lands.

What provisions to regulate investigation of claims to *lakiraj* lands.

Seventh.—Collectors or other officers who may proceed to investigate claims to *lakiraj* lands during the progress of a settlement shall follow the rules of the 15th and following sections of Regulation II, 1819,¹ in all cases wherein the parties may attend and deny the liability of their lands to assessment, subject to the modifications hereinafter provided.

Bar to resumption of lands without sanction.

Eighth.—No lands shall be resumed by a Collector, even though the parties may confess that they are liable to assessment, without the sanction of the Board of Revenue, save and except as hereinafter provided; but on such confession duly attested, which will of course supersede the necessity of any further inquiry, it shall be competent to the Board forthwith to direct the lands to be assessed, unless the same be held by village or *zamindari* servants in lieu of wages, which shall not be resumed without the sanction ²[of the Provincial Government]:

Procedure by Board.

Provided also that in all cases wherein it may appear to the Board that the resumption of lands held free of assessment would occasion serious distress to the holders, it shall be their duty to submit a report of the circumstances to the ³[Provincial Government].

Regulations applied to investigation by Collectors.

Ninth.—The provisions of clause *First*, section 23, * * * and section 28, Regulation VII, 1822⁴, shall be applicable to cases investigated by Collectors under the rules of Regulation II, 1819¹, or under the provisions of this Regulation.

Stamped paper not necessary.

Tenth.—It shall not be necessary to use stamped paper for the proceedings held or exhibits filed before the Revenue-authorities in cases originating with a Collector or other officer ⁵[of the Crown] claiming to assess land held free of assessment; but the said authorities are

¹The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

²These words were substituted for the words "of Government" by Sch. XIV of the Government of India (Adaptation of Indian-Laws) Order, 1937.

³See foot-note 1 on p. 271, *ante*.

⁴The word and figure "section 25" have been omitted in consequence of the repeal made by the Pleaders, Mukhtars and Revenue Agents Act, 1865 (XX of 1865).

⁵The Bengal Land-revenue Settlement Regulation, 1822.

⁶These words were substituted for the words "of Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1933.]

(Sec. 5.)

authorized in the said cases, as in all other cases wherein they may exercise judicial powers * * * to award to witnesses their reasonable charges, and to levy the same, as well as all costs adjudged by them, by the process in force for the recovery of arrears of the Government revenue.

Award of charges to witnesses.

Eleventh.—Persons claiming to hold lands exempt from revenue shall, with their petitions of plaint, deliver to the Collector or other officer to whom the same may be preferred all *sanads* and other writings on which their claim may be founded; and shall insert in the said petition a full specification of the several particulars required to be registered by the rules in force relative to the registry of rent-free tenures, and of the grounds on which their claim is founded.

Procedure for persons claiming to hold lands revenue-free.

If the claim shall involve only the interests of ²[the Crown], the Collector shall proceed without delay to investigate the case giving, however, eight days' previous notice to the party of the day on which he may propose to bring it to a hearing in the mode prescribed for the Civil Courts.

Investigation.

If the claim shall be against any individual singly or jointly with ²[the Crown], the Collector shall serve him with a notice containing a statement of the demand, and requiring his attendance in person or by *vakil* duly authorized, within the period of one month, with any papers or evidence he may desire to produce in denial of the claim; and, on the appearance of such defendant, the Collector, after allowing him to inspect and examine the claimant's petition of plaint, and the writings therein referred to, shall call upon him to deliver, within the period of seven days, a statement of the objections he may desire to urge against the claim.

In such cases no other pleadings shall be required from the parties than a plaint and answer, but it shall and may be lawful for Collectors to receive and record such subsidiary pleadings as may appear requisite for the elucidation of the merits of the claim.

Pleadings.

Collectors shall proceed to investigate every such case as soon as possible after the answer of the defendant shall be received; giving, however, as aforesaid, eight days' previous notice to the parties of the day on which he may propose to bring it to a hearing:

¹The words "under the provisions of the existing Regulations" which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

²These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Sec. 5.)

**Summary
proceedings.**

Provided that, in cases wherein the parties concerned or their authorized representatives shall desire or consent (the same being signified in a written petition or *ikrarnama* to be filed with the proceedings) to have an immediate decision, whether the case shall originate in a claim on behalf of ¹[the Crown] or in the suit of an individual, and whether the proceedings of the Collector shall be held under the provisions of Regulation II, 1819,² or under those of this or any other Regulation touching the matter, it shall be competent to the Collector to proceed forthwith to the investigation and decision of the case, without issuing any formal summons or notice.

**Procedure as
to land
appearing to
belong to
the Crown
and no person
bona fide
in possession.**

Twelfth.—Whenever a Collector or other officer exercising the powers of Collector shall be of opinion that any tract of land belongs to ¹[the Crown], and that no individual has *bona fide* possession thereof, it shall be competent to him, by a notification to be stuck up in his *cutcherry*, in the *Zila* Court and in the *cutcherry* of the *kanungo*, *Munsif* or *thanadar* to whose jurisdiction the land in question may belong or adjoin, to require all claimants to the same to appear before him within a reasonable time, to be fixed by the Board of Revenue, not being less than six weeks from the date of such notification; and, on the appearance of such claimants, to proceed to investigate their claims in the manner prescribed by Regulation II, 1819,² for investigations relative to the liability of lands to be assessed as herein modified:

Provided further that, if the Collector or other officer aforesaid shall decide that none of the claimants have *bona fide* possession of the lands in question, and his decision shall be affirmed by the Board of Revenue, the said lands shall be at the disposal of ³[the Provincial Government] until the same shall be adjudged to be private property by a decree of Court on a regular suit:

Provided also that all such suits, if preferred by one of the claimants before the Collector, shall be dismissed, with costs, unless instituted within six weeks of the date on which the Board may affirm the decision of that officer, and that the rule contained in clause Second, section 13, Regulation II, 1819, ²shall be strictly applied

¹See foot-note 2 on p. 275, *ante*.

²The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

³These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1825.]

(Secs. 6—8.)

to such suits: nor shall any such suit be admitted on the part of any person who may not have appeared before the Collector pursuant to notice, unless he shall be able to show good and sufficient cause for his non-appearance and shall apply for permission to sue within six weeks of his being informed of the Board's decision:

Provided further that, if the party shall not prosecute his suit within six weeks of being permitted to sue, the suit shall be dismissed with costs.

6. It shall be competent to the ¹[Provincial Government], by ²[notification in the ³*Official Gazette*], to vest any Collector or other officer who may be deputed to hold a local inquiry within the limits of any *mahal* with the same powers and authority in regard to all lands held free of assessment within or adjoining to the village or villages in which the lands of such *mahal* or any part thereof may be situated, and for the investigation of all claims touching such lands as by the foregoing provisions are vested in Collectors making settlements in the manner prescribed by Regulation VII, 1822,⁴ and also from time to time to depute Collectors or other officers aforesaid for the purpose of ascertaining, recording or investigating the said claims in the manner above prescribed.

Power to vest Collector, deputed to hold local inquiry within *mahal*, with same powers in regard to lands held free of assessment in villages adjoining *mahal*.

7. The particulars of all lands held free of assessment within all villages and *mahals* of which the settlement may be made under the provisions of Regulation VII, 1822,⁴ shall be fully recorded in the proceedings of the Collector or other officer making the settlement.

Lands held free of assessment to be specified in proceedings.

8. Nothing contained in Regulation II, 1819⁵, or in any other Regulation in force, shall affect, or be considered to affect, the provisions contained in section 10, Regulation XIX, 1793⁶ * * * * * relative to grants illegally made subsequently to the dates specified in the

Saving of certain Regulations.

¹See foot-note 1 on page 271, *ante*.

²The words "an order in Council" in the original text, are to be read as if the words "notification in the local official Gazette" were substituted therefor—see the Amending Act, 1903 (I of 1903).

³The words "*Official Gazette*" were substituted for the words "local official Gazette" by paragraph 4 (I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The Bengal Land-revenue Settlement Regulation, 1822.

⁵The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

⁶The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

⁷The words and figures "section 11, Regulation 31, 1803, and in the corresponding enactments applicable to Benares and the Conquered Provinces," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

**278 *The Bengal Land-revenue Settlement Regulation,*
1825.**

[Ben. Reg. IX of 1825.]

(Sec. 9.)

said ¹[section]; and in all cases in which it shall be established to the satisfaction of the Revenue-authorities that any lands now held free of assessment were subject to the payment of the revenue at the dates aforesaid or subsequently thereto, and that they have not been thereafter exempted from the payment of revenue under the authority of the ²[Provincial Government] nor adjudged to be exempted from payment of revenue under a regular decree of Court, it shall and may be lawful for the said authorities forthwith to resume and assess the said lands; save and except in cases wherein the revenue of the same may belong to a *zamindar*, *talukdar* or other *malguzar* with whom a permanent settlement has been concluded; nor shall the provisions of section 22, Regulation II, 1819,³ apply to such cases.

9. [*Rules relative to the abolition of the sair duties, etc., applicable to what cesses.*] Rep. by the Amending Act, 1891 (XII of 1891).

¹This word was substituted for the words "rules respectively" by the Amending Act, 1903 (I of 1903).

²See foot-note 1 on p. 271, *ante*.

³The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

Bengal Regulation XI of 1825.

(The Bengal Alluvion and Diluvion Regulation, 1825.)

(26th May 1825.)

A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion, or by dereliction of a river or the sea.

1. In consequence of the frequent changes which take place in the channel of the principal rivers that intersect the Provinces immediately subject to the Presidency of Fort William and the shifting of the sands which lie in the beds of those rivers, *chars* or small islands are often thrown up by alluvion in the midst of the stream, or near one of the banks, and large portions of land are carried away by an encroachment of the river on one side, whilst accessions of land are at the same time, or in subsequent years, gained by dereliction of the water on the opposite side; similar instances of alluvion, encroachment and dereliction also sometimes occur on the sea-coast which borders the southern and south-eastern limits of Bengal.

Preamble.

The lands gained from the rivers or sea by the means abovementioned are a frequent source of contention and affray, and although the law and custom of the country have established rules applicable to such cases, these rules not being generally known, the Courts of Justice have sometimes found it difficult to determine the rights of litigant parties claiming *chars* or other lands gained in the manner above described.

The Court of *Sadar Diwáni Adálat*, with a view to ascertain the legal provisions of the Muhammadan and Hindu laws on this subject, called for reports from their

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of s. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in the following Scheduled Districts, namely :—

West Jalpaiguri, in the Jalpaiguri district, and
the Tarai, in the Darjeeling district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4 (2).

The Bengal Alluvion and

[Ben. Reg. XI

(Secs. 2—4.)

law officers of each persuasion, and on consideration of the reports furnished by the law officers in consequence, as well as of the decisions which have been passed by the Court of *Sadar Diváni Adálat* in cases brought before them in appeal which involved the rights of claimants to lands gained by alluvion, or by dereliction of rivers or the sea, the Governor General in Council has deemed it proper to enact the following rules for the general information of individuals as well as for the guidance of Courts of Judicature; to be in force, as soon as promulgated throughout the whole of the Provinces subject to the Presidency of Fort William:—

Claims and disputes as to alluvial lands to be decided by usage when clearly recognised and established.

2. Whenever any clear and definite usage of *shikast paiwast* respecting the disjunction and junction of land by the encroachment or recess of a river may have been immemorially established, for determining the rights of the proprietors of two or more contiguous estates divided by a river (such as that the main channel of the river dividing the estates shall be the constant boundary between them, whatever changes may take place in the course of the river, by encroachment on one side and accession on the other), the usage so established shall govern the decision of all claims and disputes relative to alluvial land between the parties whose estates may be liable to such usage.

Where no usage established, claims how decided.

3. Where there may be no local usage of the nature referred to in the preceding section, the general rules declared in the following section shall be applied to the determination of all claims and disputes relative to lands gained by alluvion or by dereliction either of a river or the sea.

Lands gained by gradual accession from recess of river or sea.

4. *First*.—When land may be gained by gradual accession, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed, whether such land or estate be held immediately from ¹[the Crown] by a *zamindar* or other superior landholder, or as a subordinate tenure by any description of under-tenant whatever:

Extent of interest in increment of person in possession.

Provided that the increment of land thus obtained shall not entitle the person in possession of the estate or tenure to which the land may be annexed to a right of property or permanent interest therein beyond that possessed by him in the estate or tenure to which the land

¹These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1825.]

(Sec. 4.)

may be annexed, and shall not in any case be understood to exempt the holder of it from the payment to ¹[the Crown] of any assessment for the public revenue to which it may be liable under the provisions of Regulation II, 1819², or of any other Regulation in force.

³Nor, if annexed to a subordinate tenure held under a superior landholder, shall the under-tenant, whether a *khudkásht raiyat*, holding a *maurúsi istimrári* tenure at a fixed rate of rent per *bigha*, or any other description of under-tenant liable by his engagements, or by established usage, to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be justly liable.

Second.—The above rule shall not be considered applicable to cases in which a river, by a sudden change of its course, may break through and intersect an estate, without any gradual encroachment, or may by the violence of stream separate a considerable piece of land from one estate and join it to another estate, without destroying the identity and preventing the recognition of the land so removed.

When river by sudden change of course intersects estate.

In such cases the land, on being clearly recognised, shall remain the property of its original owner.

Third.—When a *char* or island may be thrown up in a large navigable river (the bed of which is not the property of an individual), or in the sea, and the channel of the river or sea between such island and the shore may not be fordable, it shall, according to established usage, be at the disposal of ¹[the Crown].

Chars thrown up in navigable river.

But if the channel between such island and the shore be fordable at any season of the year, it shall be considered an accession to the land, tenure or tenures of the person or persons whose estate or estates may be most contiguous to it, subject to the several provisions specified in the first clause of this section with respect to increment of land by gradual accession.

Property therein when channel fordable.

¹These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

³This paragraph of section 4. clause *First*, is repealed by s. 2 (1) of the Bengal Tenancy Act, 1885 (VIII of 1885), in the whole of the former Province of Bengal "except the town of Calcutta, the Division of Orissa and the Scheduled Districts." The extension of the repeal to Scheduled Districts depends upon the terms of notifications extending the Act of 1885 to such districts. Under the terms of the notification extending the Act of 1885 to the Jalpaiguri district, the repeal has taken effect in that district.

(Sec. 5.)

*Chars, etc.,
thrown up in
small shallow
riv*

Fourth.—In small and shallow rivers, the beds of which, with the *jalkar* right of fishery, may have been heretofore recognised as the property of individuals, any sand-bank or *char* that may be thrown up shall, as hitherto belong to the proprietor of the bed of the river, subject to the provisions stated in the first clause of the present section.

*Disputes
relative to
lands gained
by alluvion or
by dereliction
not provided
for by
Regulation.*

Fifth.—In all other cases, namely, in all cases of claims and disputes respecting land gained by alluvion or by dereliction of a river or the sea, which are not specifically provided for by the rules contained in this Regulation, the Courts of Justice, in deciding upon such claims and disputes, shall be guided by the best evidence they may be able to obtain of established local usage, if there be any applicable to the case, or, if not, by general principles of equity and justice.

*Encroach-
ments on beds
of navigable
rivers and
other
obstructions.*

5. Nothing in this Regulation shall be construed to justify any encroachments by individuals on the beds or channels of navigable rivers, or to prevent *Zila* ¹* * * Magistrates or any other officers of ²[the Crown] who may be duly empowered for that purpose from removing obstacles which appear to interfere with the safe and customary navigation of such rivers, or which shall in any respects obstruct the passage of boats by tracking on the banks of such rivers, or otherwise.

¹The words "and City" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²See foot-note 1 on p. 281, *ante*.

Bengal Regulation XIII of 1825.

[The Bengal Land-revenue Settlement (Resumed Kanungos and Revenue-free Lands) Regulation, 1825.]¹

(7th July 1825.)

A Regulation [to maintain the settlement made for certain lands held exempt from the payment of revenue by kanungos in the Province of Bihar: and] to provide for the future settlement [of such lands, as well as] of the lands composing other resumed lakhiraj tenures, with the present occupants, when so directed by Government.

1. [Whereas it was enacted by section 5, Regulation II of 1816,² that the revenue of lands held by kanungos generally in the Province of Bihar, in virtue of their offices, should be liable to resumption; and accordingly under that law, various resumptions of land so held took place, and the parties to whom the zamindari interest in the same appeared to belong were admitted to engage for the Government revenue; but, on the consideration of the proceedings held under the provisions of the above rule, it appeared to the Governor-General in Council to be improper wholly to deprive the kanungos or their representatives of the advantages derived from such lands, and enjoyed by them for a long course of years; and it was accordingly resolved by Government, on the 14th February, 1822, that in cases where the lands had been occupied and managed by the kanungos or their representatives, and the rents received by them, they should be replaced in possession of such lands, and a settlement made with them on the principle prescribed by clause second, section 8, Regulation XIX of 1793,³ namely, the revenue to be paid to Government to be equal to one-half of the annual produce (or rental)] Preamble.

¹SHORT TITLE.—This short title was given by the Amending Act 1903 (I of 1903).

LOCAL EXTENT.—This regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of s. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4 (2)

²Ben. Reg. II of 1816 was repealed by the Repealing Act, 1868 (VIII of 1868).

³The Bengal Revenue-free Lands (Non-Badahahi Grants) Regulation, 1793.

(Sec. 2.)

of the lands, calculated according to the rates at which other lands in the pargana of a similar description may be assessed, securing to the proprietors of the soil such malikana or other allowance as they might have received prior to the resumption of the official minha tenure;

And whereas the existing laws relative to the settlement of resumed lakhiraj tenures are not properly applicable to the case, and it appears to be expedient expressly to provide for the maintenance by the Courts of Judicature of the arrangement above described, in order that the kanungo minhadars may be secured in the possession (subject to the quit-rent fixed by Government) of the lands, rents and produce heretofore possessed by them;]

And whereas it is desirable to provide for the settlement, on the same principle, of any lands that may be resumed under the corresponding rules relating to *kanungos* and their official tenures in other parts of the country;

And whereas it appears to be generally expedient to make a distinct provision for securing to the holders of *lakhiraj* lands resumed by the officers of Government, and assessed on the principle prescribed in clause Second, section 8, Regulation XIX, 1793,¹ the benefits which that law was designed to bestow, and to declare the competency of Government, in other cases, to continue the persons who have heretofore occupied lands free of assessment, or their representatives, in the possession of the same, notwithstanding such lands being made subject to assessment;

The following rules have been enacted for these purposes respectively, to be in force throughout the territories subject to the Presidency of Fort William from the date of the promulgation of this Regulation.

2. In case of *lakhiraj* tenures resumed under the provisions of Regulation ** * * V, 1816,² or any other Regulation in force relative to lands held by *kanungos* by virtue of their offices, where the *minha* or *lakhiraj* tenure, and the right of property in the land, are vested in distinct parties, it shall be competent to the “[Provincial Government] by instruction to the Revenue Board or other authority empowered to make the resumption, to continue the *minhadars* and their heirs in

Power to continue *minhadars* and their heirs in possession of resumed lands, heretofore held as *lakhiraj* by *kanungos*.

¹The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

²The figures and words “4, 1808, Regulations 2 and” which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³The Bengal Kanungos Regulation, 1816.

⁴These words were substituted for the words “Local Government” by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Secs. 3, 4.)

possession and management of such lands, subject to such assessment as ¹[it] shall judge it proper to direct; and the parties claiming the *zamindari* interest or other proprietary right in such *mahals* shall not be entitled to any land-rent, produce or profit beyond what they may have enjoyed up to the period of the resumption of the tenure, or would have been entitled to receive, in the event of Government having confirmed the same in perpetuity, free of assessment.

Persons, consequently, claiming to be *maliks* of the said lands, who, during the continuance of the *lakhiraj* tenure, had not possession of the same, whether they received a *malikana* allowance or otherwise, shall not disturb the possession of the *minhadars* or their heirs and representatives, in any case wherein the ²[Provincial Government] may have sanctioned such possession; and any suit preferred by such persons in a Court of Judicature to recover possession, contrary to the intent and meaning of this rule, shall be dismissed with costs:

Provided, however, that in all cases of the nature abovementioned, wherein the *zamindar* or other proprietor of the land may have received *malikana* or other proprietary due during the existence of the *lakhiraj* tenure, he shall continue to receive the same, notwithstanding the resumption of the *lakhiraj*, in like manner as if such resumption had not taken place.

3. The tenures of the *minhadars* which have been confirmed to them with the sanction of Government by the arrangement referred to in the preamble of this Regulation, or which may be so confirmed in conformity with the preceding section, are declared to be hereditary and transferable; but, should they escheat ³[to the Crown], the parties possessing a *zamindari* interest or other proprietary right in the lands will be admitted to engage for the revenue subject to a fresh assessment to be adjusted on the actual assets under the general "[law].

Tenures of *minhadars* so situated declared hereditary and transferable.

4. The principles of sections 2 and 3 of this Regulation shall be considered applicable to all cases of *lakhiraj* resumption under the general Regulations in force, which may come within the favourable rule of assessment contained in the second clause of section 8, Regulation XIX, 1793,⁴ in the Provinces of Bengal, [*Bihar*

Foregoing sections applied to certain *lakhiraj* resumptions.

¹The word "he", in the original text, is to be read as if the word "it" were substituted therefor—see the Amending Act, 1903 (I of 1903).

²See foot-note 4 on p. 284, *ante*.

³These words were substituted for the words "to Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴This word was substituted for the word "Regulations" by the Amending Act, 1903 (I of 1903).

⁵The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

*The Bengal Land-revenue Settlement (Resumed
Kanungos and Revenue-free Lands) Regulations, 1825.*

[Bpn. Reg. XIII of 1825.]

(Sec. 5.)

and Orissa] ¹* * * *; it being the evident intention of the rule in question that it should be applied to persons who had been long in possession of the *lakhiraj* tenures made subject to assessment by ²[the Regulation] above cited, and whom it appeared equitable, in consideration of their long possession, to leave in occupancy of the lands composing their respective tenures, at a moderate assessment, not exceeding a moiety of the annual rent produce.

Modification of enactments relative to settlement of resumed *jagir*, *altamgha*, *madadmash*, *aima* or other *badshahi* grants, and to resumption of *lakhiraj* tenures.

5. In modification of the existing rules contained in ³[Regulation] XXXVII, 1793⁴, ⁵* * * * or any other Regulation in force, relative to the settlement of resumed *jagir*, *altamgha*, *madadmash*, *aima* and other grants of land termed *badshahi* or royal; and generally in qualification and explanation of all the rules in force relative to the resumption of *lakhiraj* tenures, and the future assessment of lands composing the same, it is hereby further declared that whenever such tenures may be pronounced invalid or extinct by a Revenue Board or other authority empowered to investigate the *lakhi-raj* title in such tenures, under the provisions of Regulation II, 1819,⁶ or of any other Regulation in force, it shall be competent to the ⁷[Provincial Government], on a special report of the circumstances of the case, when it may appear just and proper in consideration of the long possession of the actual occupant of the land or of his ancestors, to direct his continuance in possession, though not the *zamindar*, *talukdar* or other *malik* of the land, on his engagement for the future assessment on such terms as may be prescribed ⁸[by the Provincial Government], and in such cases the whole of the provisions contained in sections 2 and 3 of this Regulation shall be deemed applicable, and be maintained by the Courts of Judicature accordingly.

¹The words and figures "or the second clause of section 8, Regulation XLI, 1795, in the Province of Benares" which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

²These words were substituted for the words "the Regulations", *ibid.*

³This word was substituted for the word "Regulations", *ibid.*

⁴The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.

⁵The figures and word "42, 1795, and 36, 1803," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁶The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

⁷See foot-note 4 on p. 284, *ante*.

⁸These words were substituted for the words "by Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Regulation XIV of 1825.

(The Bengal Revenue-free Lands Regulation, 1825.)¹

(14th July 1825.)

*A Regulation to declare the extent of the authority possessed by the Revenue-authorities, subordinate to the Governor General in Council, in the confirmation of lakhiraj tenures; to define the principles to be followed in determining on the force and validity of grants made by persons exercising authority in different quarters previously to the acquisition of the country by the British Government * * *.*

1. Whereas doubts have arisen as to the extent of the authority possessed by the Revenue-authorities subordinate to the Governor General in Council in regard to the confirmation of *lakhiraj* tenures, which it is expedient to remove; and it is also desirable further to define the principles to be followed in determining on the force and validity of grants made by persons exercising authority in different quarters, previously to the acquisition of the country by the British Government; * * * Preamble.

And whereas it is enacted by clause *first*, section 26, Regulation II, 1819,² that in suits instituted in the Zila Courts to contest the decisions passed by the Revenue Boards under the provisions of that Regulation, * * * an appeal shall be received by the *Sadar Diwani Adalat* * * * and if appears to be expedient that * * * cases wherein the decision of the Court may be opposed to the judgment of the Board of Revenue, or other

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of s. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

²Portion repealed by the Amending Act, 1903 (I of 1903), is omitted.

³The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

⁴The words "on special grounds only," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁵The words "the above restriction should not apply to" were repealed, *ibid*.

(Sec. 2.)

authority exercising the powers of that Board,¹ * * * should be open to a regular appeal,

the following rules have been enacted, in addition to, and in modification of, the provisions of Regulations XIX² and XXXVII³, 1793,⁴ * * * of such parts of "[Regulation] XII, 1805,"⁵ as refer to *lakhiraj* lands, and of Regulation II, 1819,⁷ to be in force from the date of their promulgation throughout the Provinces immediately subject to the Presidency of Fort William.

Lakhiraj
tenures under
what
circumstances
alone valid.

2. It is hereby declared and enacted that the power of granting *lakhiraj* tenures, namely, tenures of land exempt from the public assessment, either for life or in perpetuity, as well as of confirming such tenures excepting by a regular judgment passed after a judicial inquiry, belongs and always has belonged, exclusively to the Supreme Government; and no act, order or decision granting or confirming any tenure as aforesaid within any of the territories subordinate to this Presidency, after the annexation of such territories to the British dominions, shall be held valid, unless the same shall have been done, issued or passed by or under the immediate directions of the "[Provincial Government]" or by some officer expressly authorized by Government to grant or confirm such tenures, or with respect to the confirmation of grants duly authorized by some competent Court of Judicature in a suit regularly tried and decided by it, or by one of the Revenue Boards acting in a judicial capacity, under the rules of Regulation VIII, 1811, whilst that Regulation (rescinded by section 2 of Regulation II, 1819,⁷) was in force; and subsequently under the rules of Regulation II, 1819,⁷ or any other Regulation expressly empowering the Revenue Boards, after full investigation of claims to exemption from assessment under the general rules applicable to *lakhiraj*

¹The words "but that such cases" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

³The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.

⁴The words and figures "Regulations 41 and 42, 1795, Regulations 31 and 36, 1803," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁵This word was substituted for the words and figure "Regulations 8 and", *ibid*.

⁶The Cuttack Land-revenue Regulation, 1805.

⁷The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

⁸These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1825.]

(Sec. 3.)

tenures, to pronounce a decision against the assessment, to be considered final, except on proof, in a Court of Judicature, of fraud or collusion in the previous inquiry:

Provided also that no resolution or order passed by ¹* * * the Board of Revenue or other authority exercising the powers of that Board, whereby the right ²[of the Crown] to assess any *lakhiraj* lands may have been relinquished or postponed, save and except decisions regularly passed according to the rules above cited, shall operate to the prejudice ²[of the Crown], or be held to bar the Revenue-authorities from proceeding for the recovery of public dues under the provisions of Regulation II, 1819,³ or any other rules in force relative to the resumption of *lakhiraj* tenures held under invalid grants.

3. *First.*—The following principles are to be observed in determining the force and validity of grants made by persons exercising authority in the Provinces subordinate to this Presidency, previously to the acquisition of the country by the British Government.

trial of
validity of
grants.

Second.—*Lakhiraj* tenures of which uninterrupted possession shall have been held exempt from assessment at and subsequently to the periods undermentioned shall be, and be considered to be, valid, without evidence to any formal grant or confirmation of the same, and shall be continued to heirs in cases in which it may be clearly shown, from the nature and denomination of the tenure, that it is hereditary according to the ancient usage of the country, namely, the 12th August, 1765, if the tenure be in Bengal, [*Bihar or Orissa. (excepting Cuttack)*]; the 14th October, 1719, if the tenure be in [*Cuttack, including*] Pataspur or its dependencies;

Lakhiraj
tenures, of
which
uninterrupted
possession has
been held,
declared valid,
etc.

Provided, however, that the above rule shall not apply to cases of derivative tenures, wherein it may appear that the tenure is derived from a *jagirdar* or other person, who, at any of the periods above specified, held lands free of assessment under a temporary or conditional tenure.

In all such cases the parcels of the land so held shall follow the condition of the principal tenure, and, if that be resumable, will consequently be liable to resumption.

¹The words "the Lieutenant-Governor and the Board of Commissioners, in the Ceded and Conquered Provinces," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²These words were substituted for the words "of Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

⁴Portion repealed by the Amending Act, 1903 (I of 1903), is omitted.

(Sec. 3.)

Proof of title
to hold or
recover
lakharaj
tenure to rest
on claimants.

Third.—The proof of possession in the cases provided for by the preceding clause, and (in the case of persons not the original grantees) of the hereditary nature of the tenure, shall be on the parties claiming to hold or recover the *lakharaj* tenure; the general principle being that the ruling Power is entitled to a certain proportion of the produce of every *bigha* of land, excepting so far as it shall have transferred, relinquished or compounded its right thereto; and all parties claiming the benefit of such exemptions being bound to establish their respective claims and titles:

One or more
successions
before period
specified not
to establish
title of
inheritance.

Fourth.—Provided also that, although one or more successions to any tenure as aforesaid may have taken place before the periods specified in the second clause, the fact shall not be taken to establish a title of inheritance, unless the tenure be clearly of an hereditary nature, or unless the right of inheritance therein shall have been admitted by the ¹[Provincial Government] on a reference made to Government according to the rules in force applicable to such cases.

Potentates
and
authorities
recognizable
by Courts, etc.

Fifth.—The Courts of Judicature and Revenue-authorities shall not recognise any potentate or person as having been vested with the supreme power within any part of the Provinces subordinate to this Presidency, save and except the Kings of Delhi, the *Subadars* of Bengal, Bihar and Orissa, and the several authorities specified in ** * * * ³[Regulation] XII, 1805⁴
** * * *

If in any case grants shall be produced purporting to have been made or confirmed by any other person than as aforesaid, alleged to have been vested with the supreme power for the time being, and it shall appear to the Court or other authority investigating the same that the plea is well founded, the Court or other authority before whom the case may be pending shall, before passing any decision thereupon, refer the point to the ¹[Provincial Government] and be guided by ²[its] determination.

¹See foot-note 8 on p. 288, *ante*.

²The words and figures "Regulation XLII, 1795, Regulation XXXVI, 1803, and" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

³This word was substituted for the words and figure "Regulations 8 and", *ibid*.

⁴The Cuttack Land-revenue Regulation, 1805.

⁵Portion repealed by the Amending Act, 1903 (I of 1903), is omitted.

⁶The word "his" in the original text is to be read as if the word "its" were substituted therefor—see the Amending Act, 1903 (I of 1903).

of 1825.]

(Sec. 3.)

Sixth.—To the validity of grants made or confirmed by the Kings of Delhi or by any of the Rulers aforesaid, it is and shall be held to be necessary—

Conditions requisite to establish validity of grants by such potentates, etc.

1st, that they were made or confirmed within the period during which the person granting or confirming the same possessed and exercised supreme power within the territory in which the lands specified in the grant are situate:

2nd, that the grantee actually and *bonâ fide* obtained possession of the land granted within the said period:

3rd, that the grant was not subsequently resumed by the officers or the orders of the Government for the time being previously to the acquisition of the country by the British Government, or, if so resumed, that the competence of the officer to resume shall have been expressly disallowed by the ¹[Provincial Government].

Seventh.—The following shall be held, for the purposes specified in this Regulation, to be the periods at which the several Provinces subordinate to this Presidency were acquired by the British Government, namely, for Bengal, [*Bihar and Orissa (excepting Cuttack)*], the 12th August, 1765; ²* * * for [*the Province of Cuttack*], Pataspur and its dependencies, the 14th October, 1803 ²* * *.

Periods at which provinces subordinate to Presidency of Fort William were acquired by British Government.

Eighth.—To the validity of grants not made or confirmed by the Supreme Power (excepting tenures of long possession described in the second clause of this section), it shall be held to be necessary—

Conditions necessary to validity of grants not made or confirmed by Supreme Power.

1st, that they were made or confirmed by some authority which the ¹[Provincial Government] shall have expressly declared competent to make or confirm the same;

2nd, that the grantee actually and *bonâ fide* obtained possession of the land granted, and that the revenue of the land was not subsequently resumed by competent authority.

Ninth.—Provided also that in cases in which any *lakhiraj* tenure may have been resumed previously to the acquisition of the country by the British Government, the determination of the question whether the officer by whom or by whose order the resumption may have been

Decision of questions regarding *lakhiraj* tenures, resumed previously to acquisition of country by Provincial Government.

¹See foot-note 8 on p. 288, *ante*.

²Portion repealed by the Amending Act, 1903 (I of 1903), is omitted.

[Ben. Reg. XIV of 1825.]

(Secs. 4—6.)

made was legally competent to do so shall, in all cases wherein it may be necessary to determine this question, rest with the ¹[Provincial Government].

Moreover, all questions touching the validity of grants made or confirmed by any officer subordinate to the Supreme Power, or the legal effect of resumption by any such officer which may not have been expressly provided for by the Regulations, and which may be material to the decision of any suit or inquiry, shall be referred by the Courts of Judicature or other authorities making the investigation to the ¹[Provincial Government] for determination unless the powers and competence of the officer in question shall have been previously determined ²[by the Provincial Government].

4. Nothing in this Regulation shall be construed to affect the provisions contained in Regulation XIX, 1793,³ * * * and Regulation XII, 1805,⁵ relative to lands not exceeding ten *bighas* of which the produce is *bond fide* appropriated to religious or charitable uses.

5. *[Revision of decisions passed before commencement of Regulation.] Rep. by the Repealing Act, 1873 (XII of 1873).*

6. In modification of the rules contained in section 26, Regulation II, 1819⁶, it is hereby enacted that in cases wherein a *Zila* Court shall annul or alter a judgment passed by the Board of Revenue or other authority exercising the powers of that Board under the provisions of the abovementioned Regulation, a regular appeal shall lie * * *.

The provisions of the abovementioned section shall however still be applicable to cases in which the *Zila* * * * Courts may maintain the decisions of the ⁷[Board of Revenue] or other authorities exercising the power of ⁸[that Board].

¹See foot-note 8 on p. 288, *ante*.

²These words were substituted for the words "by Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation 1793.

⁴The words and figures "Regulation 41, 1795, Regulation 31, 1803" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁵The Cuttack Land-revenue Regulation, 1805.

⁶The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

⁷Portion repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

⁸The words "or Provincial" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁹The words "Board of Revenue" and "that Board" were substituted for the words "Revenue Boards" and "these Boards", respectively by the Amending Act, 1903 (I of 1903).

Saving of
lands
devoted to
religious or
charitable

Modification
of Regulation
II, 1819,
section 26.

Bengal Regulation III of 1827.

(The Bengal Corruption and Extortion Regulation,
1827.)¹

(1st November 1827.)

A Regulation for modifying and amending the rules in force relative to the law officers and ministerial Native officers of the Courts of Judicature, who may be guilty of corruption or extortion.

1 to 4. [*Preamble; amendments; no fine to be awarded in Civil Court for corruption or extortion; criminal prosecution not to depend on civil action.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

5. From and after the date of this Regulation, it shall not be necessary for any party from whom money or property may have been corruptly taken or extorted to institute a civil action for the recovery thereof; but, on proof of the charge in a criminal prosecution for those offences, a certified copy of the conviction by ²[the Court] shall be received as sufficient authority for enforcing the refund of the amount or value so taken, with interest, on application to that effect being preferred by the aggrieved party to the Civil Court,
* * * *

Record of criminal conviction sufficient for compelling refund of property corruptly taken or extorted.

6. [*Amount of embezzlement to be paid in first instance from public treasury.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation (s. 5) has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in west Jalpaiguri, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

²These words were substituted for the words "a Court of Circuit or the Nizamat Adalat" by the Amending Act, 1903 (I of 1903).

³The words "on the stamped paper prescribed for miscellaneous petitions" which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

Bengal Regulation V of 1827.

(The Bengal Attached Estates Management Regulation, 1827.)¹

(27th December 1827.)

A Regulation for modifying the rules at present in force for the management of estates under attachment by orders of the Courts of Justice in certain cases.

1. Whereas it is expedient in all cases of the attachment of landed property under orders of the Courts of Justice that the management of the estate attached should be placed under the superintendence of the Collectors of land-revenue, the following rules have been enacted by the Governor-General in Council, to be in force, from the date of their promulgation, throughout the territories immediately subject to the Presidency of Fort William. Preamble.

2. The rules contained in sections 5 and 6, Regulation V, 1799², * * * regarding the administration and management of estates under orders of the Zila * * * Courts, are hereby declared subject to the following modifications. Modification of regulation regarding management of estates under attachment.

3. Whenever the Zila * * * Courts may deem it just and proper, under the provisions of the ⁵[Regulation] above mentioned, to provide for the administration or management of landed property, the Court shall issue a precept to the Collector of land-revenue of the district wherein the estate may be situated, directing him to hold the estate in attachment, and to appoint a person for the due care and management of the Issue of precept for holding estates under attachment and for appointing managers.

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see s. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), p. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

²The Bengal Wills and Intestacy Regulation, 1799.

³The words and figures "and clauses 5 and 6, section 16, Regulation III, 1803," and "and sections 26 and 27, Regulation V, 1812, and clause *Third*, section 5, Regulation VI, 1813," which were repealed by the Amending Act, 1903 (I of 1903), and the Repealing Act, 1874 (XVI of 1874), respectively, are omitted.

⁴The words "and City" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁵The word was substituted for the words "several Regulations" by the amending Act, 1903 (I of 1903).

[Ben. Reg. V of 1827.]

(Sec. 4.)

estate, under good and adequate security for the faithful discharge of the trust, in a sum proportionate to the extent thereof:

• Provided, however, that if any person holding an interest in the estate shall be dissatisfied with the selection made by the Collector of the individual to perform the duty in question, or with the conduct of the manager at any time after his appointment, it shall be competent to such person to represent his objections to the Board of Revenue, and the Board will either confirm the manager chosen, or order the Collector to appoint another person, as on consideration of the circumstances of the case may appear reasonable and proper.

**Precept to State
property
included in
attachment.**

4. The precept of the *Zila* ^{1*} * Court above mentioned shall state specifically the property to be included in the attachment, and the attachment shall not be withdrawn without a further precept from the Court to that effect.

¹The words "or City" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

Bengal Regulation III of 1828.

[The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1828.]¹

(12th June 1828.)

A Regulation for * * * more effectually securing the realization of the public dues.

1. * * * it appears to be expedient * * * to provide that all successions to the possession of land or rent, free of assessment, whether by sale, gift or inheritance, shall be regularly reported to the Revenue-authorities; Preamble-

it has likewise appeared to be expedient and proper to make provision for the immediate settlement of the limits of the Sundarbans, as ascertained by careful local inquiry, conducted by the Commissioner specially appointed to the duty, and the surveyors under his authority; and also to declare the intent and meaning of certain parts of the existing Regulations in regard to which doubts have arisen;

the following rules have accordingly been enacted, to be in force from the date of their promulgation throughout the Provinces immediately subordinate to the Presidency of Fort William.

2 to 8. [*Special Commissioners for final determination of cases investigated under the Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819 (II of 1819), ss. 5 to 20, and the Bengal Land-revenue Settlement Regulation, 1825 (IX of 1825), s. 5, and for determination of suits brought to contest the demand of Revenue-officers.*] Rep. by the Amending Act, 1903 (I of 1903).

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of s. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

*Words in the title which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

*Portions of s. 1 were repealed, *ibid.*

(Secs. 9, 10.)

9. [Oaths to be taken by special Commissioners.]
Rep. by the Repealing Act, 1873 (XII of 1873).

Regulation
II, 1819,
modified and
extended.

Decisions of
Board of
Revenue
under section
21 of Regula-
tion II, 1819,
to be exe-
cuted not-
withstanding
suit to con-
test them.

10. *First*.—The following rules are hereby enacted in modification and extension of the provisions contained in sections 22, 23, 24, Regulation II, 1819.¹

Second.—All decisions which have been or may be passed by the ²[Board] of Revenue under the rules in section 21, Regulation II, 1819,¹ declaring the liability to assessment of lands * * * shall be carried into immediate execution by the Collectors or other local Revenue-officers of such district, notwithstanding that the parties against whom such decisions may have been or may be passed shall have sued or shall sue to contest the Board's decision in one of the established Courts of Justice * * * ; and such parties shall not be permitted to retain possession of the lands unless they enter into an engagement to pay the assessment which may be fixed upon them; such assessment to be collected under the general rules for the realization of the Government revenue from farmers thereof.

Consequence
of declining
to pay
assessment.

And if any person against whom the Board may have decided shall decline to pay the assessment fixed on the lands, he shall be forthwith dispossessed, and such arrangements shall be made for the collection of the Government revenue as the Collector, under the orders of the Board, may see fit to adopt: but in the event of a final decision being passed, exempting the tenure of any such person from assessment, the net collections made on account of Government shall be refunded, with interest thereon at the rate of six *per cent. per annum*.

Trial of suits
to contest
Board's deci-
sion in cases
in which
jurisdiction
of Courts is
not barred.

Third.—All suits which may be instituted in the established Courts of Justice under the provisions of sections 22 and 24, Regulation II, 1819,¹ and section 5, Regulation IX, 1825,² to contest decisions of the ²[Board] of Revenue shall, when the jurisdiction of the above Courts is not barred by the operation of this Regulation, be heard and determined in the same manner as regular appeals, and no further pleadings

¹The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

²This word was substituted for the word "Boards" by the Amending Act, 1903 (I of 1903).

³The words "whether the same be situated in districts to which the jurisdiction of a special Commissioner has been extended or in any other district," were repealed, *ibid*.

⁴The words "or to the Commissioner appointed under this Regulation" were repealed, *ibid*.

⁵The Bengal Land-revenue Settlement Regulation, 1825.

of 1823.]

(Sec. 11.)

shall be required or received in such cases than the objections of the appellant to the decision of the Board and the reply to those objections on the part of the Revenue-authorities;

the said Courts shall likewise, on the admission of an appeal, invariably call for the original record of the Board's proceedings in each case, and shall then require the parties to file their pleadings as above provided; but it shall not be competent to the Courts to take further evidence, oral or documentary, unless it shall appear that such evidence was tendered by the party adducing it to the Collector or the Board, and was then rejected on insufficient grounds or that such evidence is essential to the ascertainment of some fact material to the issue, which may not have been fully inquired into in the course of the previous investigation.

Fourth.—Provided, however, and it is hereby enacted, that nothing contained in the preceding clause shall be construed to bar the admission of a further appeal on the part of the Revenue-authorities to * * * the Court of *Sadar Diwani Adalat*, from decisions passed in the first instance in the *Zila* * * * Courts in cases of the nature described and specially provided for in section 6, Regulation XIV, 1825⁴, nor the admission by those tribunals of the special appeal on the application of the party opposed to Government under the rules in section 26, Regulation II, 1819⁵.

Proviso as to admission of appeals from inferior to superior Courts.

Fifth.—Appeals filed in the established Courts of Civil Judicature to contest decisions of the Board of Revenue shall be kept on a file or register distinct from that on which other suits before those Courts are entered * * * * *

Appeals from Board's decisions to be kept distinct.

11. First.—[Provisions for securing information of transfers of land held free of assessment.] Rep. by the Repealing Act, 1874 (XVI of 1874).

Second.—Persons succeeding to the possession of any lands held free of assessment or held on a *mukarrari jama*, on the decease of a former occupant, or by gift, purchase or other assignment or transfer of proprietary

Persons succeeding to possession of lands revenue-free or on *mukarrari jama* to report to Collector.

¹The words "the Provincial Courts or" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words "or the Provincial" were repealed, *ibid*.

³The word "respectively," was repealed, *ibid*.

⁴The Bengal Revenue-free Lands Regulation, 1825.

⁵The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

⁶The remainder of s. 10, *Fifth*, which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

(Sec. 12.)

right, are hereby required immediately to notify the same to the Collector or other officer exercising the powers of Collector within the district in which the land may be situated, and any omission to notify such succession or transfer for a period of six months or more shall subject such land to immediate attachment by the Revenue-officers.

Nor shall land so attached be restored to the party who may claim to hold it, though the validity of the tenure be subsequently established to the satisfaction of the Revenue authorities, until such party shall have paid to ¹[the Provincial Government] a fine equal to one year's rent; and, if the revenue derivable from the land be not awarded to be the right of the individual, the party shall further be required to refund the amount of the collections made by him, with interest thereon at the rate of twelve *per cent. per annum*: provided also that the said rent and collections shall be estimated according to the assessment demandable from the *raiyats* at the time of attachment.

Third.—Where the lands of any individual may be attached under the above rule, any claim which he may prefer to recover possession thereof, and to hold the same free of assessment or on a *mukarrari jama*, shall be investigated and determined by the Collector under the provisions of Regulation II, 1819², as modified by the present Regulation and by those which have been intermediately enacted.

12. All tenures which may not have been duly registered in the manner prescribed by the Regulations, or of which the specification contained in the register shall not purport the same to be held under an hereditary title or as a perpetual endowment, shall be and be held to have been liable to resumption, unless the same may have been declared hereditary by a final decree of a competent Court of Judicature, on the demise of the persons who were in possession at the dates respectively of Regulations XIX³ and XXXVII⁴, 1793, * * * and XII, 1805⁵, according as the lands may be within

Investigation
of claims to
recover
possession of
attached
lands.

Unregistered
tenures liable
to resumption,
unless
declared
hereditary by
decree of
competent
authority.

¹These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

³The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

⁴The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.

⁵The words and figures "Regulations 41 and 42, 1795, Regulations 31 and 36, 1803, Regulation 8" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁶The Cuttack Land-revenue Regulation, 1805.

of 1828.]

(Sec. 13.)

the districts to which those Regulations are severally applicable, or in other parts of the country at the date at which the same came into the possession of the British Government.

And Collectors and other officers exercising the powers of Collector shall accordingly proceed to assess, and, if necessary, attach all lands liable to resumption as above, in the same manner and with the same powers as they are authorized and required to proceed in the case of a lapsed farm, anything in the existing Regulations to the contrary notwithstanding:

Provided further that the nature and extent of the interests vested in the holders of lands and rents exempted from assessment shall, when the title-deeds are forthcoming, and their authenticity recognized, be construed and defined with reference to the whole of the matter contained in such deeds, and not merely by the designation of the tenure. *Jagirs* consequently shall not be held to be life-tenures in cases in which the recital of the grant shall be such as clearly to convey an hereditary interest: nor shall any tenures, howsoever designated, be considered to be hereditary and perpetual if the grants under which they are held shall not convey, in express terms, an hereditary or perpetual interest.

13. First.—The uninhabited tract known by the name of the Sundarbans has ever been, and is hereby declared still to be, the property of the State: the same not having been alienated or assigned to *zamindars*, or included in any way in the arrangements of the perpetual settlement, it shall therefore be competent to the ¹[Provincial Government] to make, as heretofore, grants, assignments and leases of any part of the said Sundarbans, and to take such measures for the clearance and cultivation of the tract as ²[it] may deem proper and expedient.

Sundarbans declared property of State, and Government competent to make grants and to take measures for its clearance.

All parties to whom such grants, leases or assignments shall have been made, or to whom they may hereafter be made, shall be entitled to hold or to take possession of any tract of Sundarban *jungle* so granted or assigned without question or opposition, and all public officers shall aid and assist the same:

Grantees' right.

¹These words were substituted for the words "Local Government" by paragraph 4(7) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The word "he" in the original text, is to be read as if the word "it" were substituted therefor—see the Amending Act, 1903 (1 of 1903).

(Sec. 13.)

Suit to
contest
such right.

Provided also that if any *zamindar*, *talukdar* or other *sadar malguzar* or any other person owning and occupying or collecting the rent or revenue of cultivated land in the neighbourhood of the land so granted, leased or assigned shall sue in any Court of *Adalat* ¹* * * to contest the validity of the title or the right of possession of any such lessee or grantee under such grant, lease or assignment, then if the land aforesaid shall be proved to be, or to have been, or be not denied to be or to have been, when so granted, leased or assigned, within the limit of the unoccupied *jungle* so named and described, the suit shall be dismissed with costs:

Compensation
to *zamindar*
claiming
valuable
interest.

Provided, however, that if any *zamindar*, *talukdar* or other person aforesaid shall claim to possess a valuable interest in any part of the Sundarbans, by virtue of authority to collect money or other valuable thing from the persons engaged in gathering wax, or cutting wood or obtaining other *jungle* products of the tract, or by virtue of any other similar privilege or advantage which may have been recognized as part of the assets on which the assessed revenue of his *zamindari*, *talukdari* or other tenure was adjusted at the time of farming the perpetual settlement of the district, and the collection of which was not subsequently stopped and due compensation made under the rules relative to the collection of *sair* revenue or other similar arrangement, such *zamindar*, *talukdar* or proprietor shall be entitled to receive ²[from the Provincial Government] compensation for any diminution in the value of such interest and advantage consequent on the arrangements adopted for the cultivation of the Sundarbans; the same being duly established after an investigation conducted under the rules of Regulation II, 1819³, as modified by this Regulation.

Second.—[Demarcation of boundaries of the Sundarban jungle.] Rep. by the Sundarbans Act, 1905 (Ben. Act I of 1905).

¹The words "or before a special Commissioner under this Regulation," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²These words were substituted for the words "from Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

Bengal Regulation IV of 1828.

(The Bengal Land-revenue Settlement Regulation, 1828.)¹

(7th August 1828.)

11

1. [Preamble.] Rep. by the Amending Act 1903 (I of 1903).

2. First, Second, Third.—[Collectors making or revising settlements empowered to try all questions of property in or possession of lands.] Rep. by the Bengal Land-revenue (Settlement and Deputy Collectors) Regulation, 1833 (IX of 1833).

Fourth.—To prevent doubts as to the period for which Collectors and other officers² [vested with the powers of a Collector] are to possess the powers vested in them³ * * * by Regulation VII, 1822⁴, in regard to any *mahals* of which the settlement may have been, or may be about to be made or revised, it is hereby declared and enacted that they shall be held and considered to be engaged in making and revising such settlement from the date on which they have issued or may issue orders for adjusting the boundaries, for measuring any of the lands or for making a census of the inhabitants of any village or portion of a village belonging to such *mahal*, of which intimation shall be given to the Magistrate or Joint Magistrate within whose division

Period during which Collectors are to be considered to be engaged in making and revising settlements.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—Section 2(4) of this Regulation has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

Section 2(4) has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in the following Scheduled Districts, namely :—

West Jalpaiguri, in the Jalpaiguri district : and
the Western Hills and the Tarai, in the Darjeeling district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

²The long title which was repealed by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), is omitted.

³These words were substituted for the word "aforesaid" by the Amending Act, 1903 (I of 1903).

⁴The words "by this Regulation and" were repealed, *ibid*.

⁵The Bengal Land-revenue Settlement Regulation, 1822.

[Ben. Reg. IV of 1828.]

(Sec. 2.)

the village shall be situated, up to the day on which they may be informed that the settlement, as made and revised by them, has been finally confirmed ¹[by the Provincial Government].

During the aforesaid period ²* * Magistrates and Joint Magistrates ³* * * shall be guided, in respect to such *mahals*, by the provisions of clause *Second*, section 34, Regulation VII, 1822⁴, by which they were required to refer to the Revenue-authorities disputes regarding lands, premises, crops, watercourses and the like.

And all police-officers are required to give immediate and efficient support to Collectors and other Revenue-officers in the execution of their duties.

¹These words were substituted for the words "by Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words "the powers vested in" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words and figures "by Regulation XV, 1824, shall be suspended in regard to all *mahals* of which the settlement may be so in progress, and the said officers" were repealed, *ibid*.

⁴The Bengal Land-revenue Settlement Regulation, 1822.

Bengal Regulation I of 1829.

**(The Bengal Revenue Commissioners Regulation,
1829.)¹**

(1st January 1829.)

*A Regulation for constituting Commissioners of Revenue
and Circuit * * *.*

1. The system in operation for superintending the magistracy and the police, and for controlling and directing the executive Revenue-officers, who in several cases are also Magistrates, has been found to be defective. Preamble.

The Provincial Courts of Appeal and Circuit, as now constituted, partly from the extent of country placed under their authority, and partly from their having to discharge the duties of both civil and criminal tribunals, have, in many cases, failed to afford that prompt administration of justice which it is the duty of Government to secure for the people.

The gaol-deliveries have been, in some instances, delayed beyond the term prescribed by law, [*especially in the division of Bareilly, which comprises thirteen stations at which gaol-deliveries have to be held, beside the joint magistracies of Bilá and Sirpurá,*] and a great arrear of cases under appeal has accrued in all the Courts, to the manifest injury of many individuals and to the encouragement of litigation and crime.

The Judges of Circuit, when employed singly in the districts under their authority, do not possess sufficient powers, nor have they the opportunity of acquiring sufficient local knowledge, to enable them adequately to control the police or protect the people.

The great extent of country under each of the Boards of Revenue has similarly operated to impede them in the execution of the duties which belong to them as

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—*see* the concluding paragraph of s. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in the following Scheduled Districts, namely :

West Jalpaiguri, in the Jalpaiguri district; and
the Western Hills, the Tarai and the Dumson Subdivision,
in the Darjeeling district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

²The rest of the title was repealed by the Amending Act, 1903 (I of 1903), and is omitted.

(Sec. 2.)

tribunals for the determination of all questions relative to the assessment of lands under settlement and for the judicial decision of many other important cases, as the general guardians of the fiscal interests of the State, as directors and superintendents over the executive officers, and as the confidential advisers of Government.

For the correction of the above defects, it has appeared to be expedient and necessary to place the magistracy and police, and the Collectors and other executive Revenue-officers under the superintendence and control of Commissioners of Revenue and Circuit, each vested with the charge of such a moderate tract of country as may enable them to be easy of access to the people, and frequently to visit the different parts of their respective jurisdictions; to confide to the said Commissioners the powers ¹ * * * that belong to the Boards of Revenue, to be exercised, with the modifications hereinafter provided, ¹ * * * under the instructions and control of a Sadar or Chief Board of Revenue, ¹ * * *.

With the above views and purposes the Governor General in Council has enacted the following rules to be in force from the 1st March, 1829, throughout the Provinces immediately subject to the Presidency of Fort William.

2. A Commissioner of Revenue and Circuit shall be appointed for each of the under-mentioned divisions:

Provided, however, that ²[, subject to the provisions of section 246 of the Government of India Act, 1935,] it shall be competent to the ³[Provincial Government by an order], to transfer any district or districts from one division to another, and to increase or reduce the number of Commissioners, if such a measure shall appear to be necessary or expedient; due notice of any such arrangement being given by public proclamation.

26 Geo. V,
C. 2.

1* * * *

[10th Division, to contain the districts under the } Saran
Magistrates, Collectors, Joint-Magistrates and } Shahabad and
Sub-Collectors of } Tirhut.

11th ditto ditto of { Patna,
Bihar and
Ramgarh.]

12th ditto ditto ~~of~~ of { [Bhagalpur,
Monghyr,]
Malda [and
Purnea.]

¹Portions repealed by the Amending Act, 1903 (I of 1903), are omitted.

²These words were inserted by Schedule XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "Governor General in Council, by an order in Council", *ibid*.

Appointment
of Commis-
sioners of
Revenue and
Circuit for
divisions
specified.

of 1829.]

(Secs. 3, 4.)

13th	Division, to contain the districts under the Magistrates, Collectors, Joint-Magistrates and Sub-Collectors of	..	..	..	{ Dinajpur, Rangpur, Rajshahi and Bogra.	
14th	ditto	ditto	of	..	{ Murshidabad, Birbhum and Nadia.	
15th	ditto	ditto	of	..	{ Dacca, ¹ Jalálpur, ¹ Tippera and Mymensingh.	
16th	ditto	ditto	of	..	{ Chittagong and Noakhali }	* **
*	*	*	*	*	*	**
18th	ditto	ditto	of	..	{ Backergunge,, Jessore, Suburbs of Calcutta, 24-Parganas and Barasat.	
19th	ditto	ditto	of	..	{ [Cuttack, Khurda, Balasore,] Midnapore and Nagwán, including Hijli.	and in-
20th	ditto	ditto	of	..	{ Burdwan, Jungle and Hooghly.	Maháls

3. [Commissioners invested with powers of Judges of Circuit and Courts of Circuit collectively; period of holding sessions, etc.] Rep. by the Repealing Act, 1874 (XVI of 1874).

4. First.—The said Commissioners shall, until otherwise specifically provided for by law, possess and exercise within the several districts comprised in their respective divisions the powers and authority now vested in the Boards of Revenue and Courts of Wards, subject to the control and direction of a *Sadar* or Head Board, to be ordinarily stationed at the Presidency, unless otherwise directed by the “[Provincial Government], and to such restrictions and provisions as the “[Provincial Government] or the said *Sadar* Board, with ⁵[its] authority or sanction, may precribe.

Commissioners to have powers of Boards of Revenue and Courts of Wards.

¹The City of Dacca and the *Zila* of Dacca Jalálpur were amalgamated as the district of Dacca by Ben. Reg. V of 1833, which was repealed by the Laws Local Extent Act, 1874 (XV of 1874).

²The words “To be placed under the officer appointed to control the affairs of Arakan”, which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

³Portion repealed by the Amending Act, 1903 (I of 1903), is omitted.

⁴These words were substituted for the words “Governor General in Council” by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵This word was substituted for the word “his” by paragraph 5(2), *ibid*.

[Ben. Reg. I of 1829.]

(Secs. 5—10.)

Sadar Board and Commissioners how guided as to form of their revenue-proceedings.

Second.—In regard to the form of their proceedings in the Revenue Department, the Commissioners and the Sadar Board shall be guided by such orders as the ¹[Provincial Government] may from time to time issue, and it shall be competent to the ¹[Provincial Government] to fix the stations at which the Board and the Commissioners, when not employed on the duties of circuit, shall reside, at such places within the territories belonging to this Presidency as may from time to time be deemed expedient.

When tract within jurisdiction of Magistrate of one division is under Collector of another division.

Third.—Provided also that, in cases in which any tract of country that belongs to the jurisdiction of a Magistrate or Joint Magistrate of one division may be under the authority of a Collector or Deputy Collector attached to another division, the ¹[Provincial Government] shall determine, ²[by order], the nature and extent of the powers to be exercised in regard to the revenue affairs of such tract by the Commissioners respectively with whose divisions it may be so jointly connected.

5. [*Abolition of powers of certain Provincial Courts of Appeal.*] Rep. by the Repealing Act, 1874 (XVI of 1874).

6. [*Repeal of inconsistent provisions.*] Rep. by the Amending Act, 1903 (I of 1903).

7, 8. [*Offices of Superintendents of Police abolished; Commissioners to perform duties of Superintendents; tender of pardon to accomplices; Powers of Commissioner of Cuttack and Midnapore.*] Rep. by the Amending Act, 1903 (I of 1903).

9. *First.*—[*Powers of Commissioners of Arakan and Assam.*] Rep. by the Amending Act, 1903 (I of 1903).

Second.—[*Conferment of powers on the Commissioner for the districts of the Northern Dooab, &c.*] Rep. (except in certain Scheduled areas) by the North-Western Provinces Land-revenue Act, 1873 (XIX of 1873). (*Conferment of powers on the Resident at Delhi.*) Rep. in part by Ben. Reg. VI of 1831; residue rep. by Ben. Reg. X of 1831.

10. [*Abolition of office of mufassal special Commissioner; modification of practice under Regs. I of 1821 and I of 1823.*] Rep. by the Amending Act, 1903 (I of 1903).

¹See foot-note 4 on p. 307, *ante*.

²These words were substituted for the words "by an order in Council" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Regulation XVII of 1829.

(The Bengal Sati Regulation, 1829.)¹

(4th December 1829.)

A Regulation for declaring the practice of sati or of burning or burying alive the widows of Hindus illegal and punishable by the Criminal Courts.

1. The practice of *sati* or of burning or burying alive the widows of Hindus is revolting to the feelings of human nature; it is nowhere enjoined by the religion of the Hindus as an imperative duty; on the contrary, a life of purity and retirement on the part of the widow is more especially and preferably inculcated, and by a vast majority of that people throughout India the practice is not kept up nor observed: in some extensive districts it does not exist; in those in which it has been more frequent it is notorious that in many instances acts of atrocity have been perpetrated which have been shocking to the Hindus themselves and in their eyes unlawful and wicked. Preamble.

The measures hitherto adopted to discourage and prevent such acts have failed of success, and the Governor General in Council is deeply impressed with the conviction that the abuses in question cannot be effectually put an end to without abolishing the practice altogether.

Actuated by these considerations, the Governor General in Council, without intending to depart from one of the first and most important principles of the system of British Government in India, that all classes of the people be secure in the observance of their religious usages, so long as that system can be adhered to without violation of the paramount dictates of justice and humanity, has deemed it right to establish the

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of s. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri and the Western Duars, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

(Secs. 2, 3.)

following rules, which are hereby enacted to be in force from the time of their promulgation throughout the territories immediately subject to the Presidency of Fort William.

Sati declared
illegal and
punishable.

2. The practice of *sati* or burning or burying alive the widows of Hindus is hereby declared illegal and punishable by the Criminal Courts.

Zamindars,
etc., respon-
sible for
immediate
communica-
tion to
police of
intended
sacrifice.

3. *First.*—All *zamindars*, *talukdars* or other proprietors of land, whether *malguzari* or *lakhiraj*, all *sadar* farmers and under-renters of land of every description, all dependent *talukdars*, all *naibs* and other local agents, all Native officers employed in the collection of the revenue and rents of lands on the part of Government or the Court of Wards and all *mandals* or other headmen of villages, are hereby declared especially accountable for the immediate communication to the officers of the nearest police-station of any intended sacrifice of the nature described in the foregoing section; and any *zamindar* or other description of persons above noticed, to whom such responsibility is declared to attach, who may be convicted of wilfully neglecting or delaying to furnish the information above required, shall be liable to be fined by the Magistrate or Joint Magistrate in any sum not exceeding two hundred rupees, and in default of payment to be confined for any period of imprisonment not exceeding six months.

Penalty in
case of
neglect.

Police how
to act on
receiving
intelligence
of intended
sacrifice.

Second.—Immediately on receiving intelligence that the sacrifice declared illegal by this Regulation is likely to occur, the police *daroga* shall either repair in person to the spot, or depute his *muharrir* or *jamadar*, accompanied by one or more *barkandazes* of the Hindu religion and it shall be the duty of the police-officers to announce to the persons assembled for the performance of the ceremony that it is illegal, and to endeavour to prevail on them to disperse, explaining to them that, in the event of their persisting in it, they will involve themselves in a crime and become subject to punishment by the Criminal Courts.

Should the parties assembled proceed in defiance of these remonstrances to carry the ceremony into effect, it shall be the duty of the police-officers to use all lawful means in their power to prevent the sacrifice from taking place, and to apprehend the principal persons aiding and abetting in the performance of it; and in the event of the police-officers being unable to apprehend them they shall endeavour to ascertain their names and places of abode, and shall immediately communicate the whole of the particulars to the Magistrate or Joint Magistrate for his orders.

of 1829.]

(Secs. 4, 5.)

Third.—Should intelligence of a sacrifice declared illegal by this Regulation not reach the police-officers until after it shall have actually taken place, or should the sacrifice have been carried into effect before their arrival at the spot, they will nevertheless institute a full inquiry into the circumstances of the case, in like manner as on all other occasions of unnatural death, and report them for the information and orders of the Magistrate or Joint Magistrate to whom they may be subordinate.

How to
act when
intelligence
of sacrifice
does not
reach them
until after
it has taken
place.

4, 5. [*Trial of persons concerned in the sacrifice; sentence of death by Court of Nizamat Adalat.*] *Rep. by Act XVII of 1862.*

Bengal Regulation V of 1830.

(The Bengal Indigo Contracts Regulation, 1830.)¹

(9th June 1830.)

*A Regulation * * * relating to the cultivation and delivery of indigo-plant.*

1. 2* * * * * *** Preamble.**

whereas it is desirable in certain cases to afford persons who may be unwilling to renew their contracts for the cultivation of indigo the means of obtaining, by summary process, a release from their engagements;

the following rules have been enacted, to be in force from the date of their promulgation throughout the territories subject to the Presidency of Fort William.

2. [*Criminal prosecution of persons inducing raiyats to break contract.*] *Rep. by the Repealing Act, 1868 (VIII of 1868).*

3. [*Cultivators failing to fulfil engagements liable to imprisonment.*] *Rep. by Act XVI of 1835.*

4. [*Punishment of persons damaging indigo-plant.*] *Rep. by Act III of 1857.*

5. First.—Any person who, having received advances under a written agreement for the cultivation of indigo, shall be desirous, on the expiration of the period of his contract, to settle his account, shall be at liberty, in the event of the proprietor of the factory, or the person acting in his behalf, refusing to settle the same, to present a petition to the *Zila Court*;

Procedure by persons wishing to be released from their engagements.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was enacted for the whole of the former Province of Bengal—see the concluding paragraph of s. 1.

Sections 1 and 5 of the Regulation have been declared, by the Laws Local Extent Act, 1874 (XV of 1874) s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

The same sections have been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4 (2).

²Words in the title and preamble which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

[Gen. Reg. V of 1830.]

(Sec. 5.)

and the Judge, after a summary inquiry, in the presence of the parties or their authorized agents, into the merits of the case, shall, on proof of the expiration of the contract, and of there being no balance due from the petitioner, or if the petitioner shall deposit in Court the amount of any balance that may be adjudged to be due from him, grant the said petitioner a release from his engagement, and shall pay over the amount of any balance that may be deposited by him to the proprietor, or to the person acting in his behalf.

Procedure if
proprietor
objects to
receive
balance.

Second.—If the proprietor or person aforesaid shall refuse to receive the balance awarded to him by the summary process above provided, the Judge shall return the amount to the petitioner, leaving the defendant to seek his remedy by a regular suit.

Bengal Regulation IX of 1833.

[The Bengal Land-revenue (Settlement and Deputy Collectors) Regulation, 1833.]¹

(9th September 1833.)

*A Regulation to modify certain portions of Regulation VII of 1822² * * * to provide for the more speedy and satisfactory decision of judicial questions cognizable by officers of revenue employed in settlements under the above '[Regulation]'; for enforcing the production of the village-accounts; for the more extensive employment of native agency in the Revenue Department; and to declare the intent of section 5, Regulation VII of 1822,² touching claims to malikana.*

1. Experience having demonstrated the expediency of modifying certain enactments of Regulation VII of 1822² * * *, also of providing a more speedy and satisfactory mode of deciding such judicial questions as may be cognizable by officers of the Revenue Department under ⁵[that Regulation] and of declaring the intent of the rules regarding *malikana* promulgated by section 5, Regulation VII of 1822²; it having been found expedient likewise that measures should be adopted for enforcing the production of the village-accounts, and for rendering them accessible to all persons concerned having occasion to examine them; also that natives of respectability should be employed in more important trusts connected with the revenue-administration; the following provisions have been enacted, to be in force from the date of their promulgation. Preamble.

2. [*Repeal of provisions of Regulation VII of 1822, as to mode of determining jama to be demanded from mahal.*] *Rep. by the Amending Act, 1903 (1 of 1903).*

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903).

LOCAL EXTENT.—The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4(2).

²The Bengal Land-revenue Settlement Regulation, 1822.

⁵The words and figures "and Regulation 4 of 1828" in the title and s. 1, which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁴This word was substituted for the word "Regulations", *ibid.*

⁵These words were substituted for the words "those Regulations", *ibid.*

(Secs. 3—8.)

3. [Repeal of provisions of Regulation VII of 1822 as to investigation of claims simultaneously with determination of Government demand.] Rep. by the Amending Act, 1903 (1 of 1903).

The ¹[Provincial Government] will hereafter determine the order in which the above matters shall be respectively disposed of.

4. [Repeal of parts of the Bengal Land-revenue Settlement Regulation, 1828 (IV of 1828).] Rep. by the Repealing Act, 1874 (XVI of 1874).

When Collector making settlements considers arbitration necessary, he may fix period for production of a ward.

5. In addition to section 33, Regulation VII of 1822² it is hereby enacted that whenever any judicial question may be depending before a Collector or other officer employed in making settlements under the provisions of Regulation VII of 1822², in which the interests of justice may, in the opinion of such officer, require that the case be decided by arbitration, it shall be lawful for him to fix, under the instructions with which he may be furnished by the superior Revenue-authorities, a period within which the parties must produce the award.

When Collector may summon *panchayat*.

6. In that case, if the parties shall refuse or neglect to produce such award within the term limited, it shall be lawful for the Collector or other officer to summon a *panchayat*, to be composed of three or five impartial and otherwise competent persons of good repute for the trial of the matter at issue.

Procedure of *panchayat*.

7. After duly considering the statements and evidence offered by the parties, or, in case of the default or recusance of either, the statements and evidence produced by the party in attendance, the *panchayat* shall declare their opinions, and judgment shall be recorded according to the sentence of the majority.

The superior Revenue-authorities will from time to time issue such rules of practice for the guidance of the officers employed on this duty, or the *panchayats*, as they may consider necessary.

Bar of appeal :—
submission to second *panchayat*.

8. No appeal shall be allowed from such decisions, which shall be immediately executed and maintained, unless the Commissioner, subject to the control of the * * * Board of Revenue should think proper, for any special reason, to direct that the case shall be submitted to another *panchayat* for decision.

¹These words were substituted for the words "Governor General in Council" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The Bengal Land-revenue Settlement Regulation, 1822.

³The word "Sadar" which was repealed by the Amending Act, 1903 (1 of 1903), is omitted.

of 1833.]

(Secs. 9—17.)

9. Any suit brought before any Court of Justice to set aside a decision made in conformity with the above rules shall be non-suited with costs.

Non-suit of suit to set aside decision; also suits against arbitrators.

10. In like manner any suit brought before any Court of Justice against the arbitrators, collectively, or individually, appointed in conformity with the rules prescribed, to recover from them the value of the property lost by the decision founded on their award, shall be non-suited with costs.

11. It is hereby declared that the rules concerning *malikana* contained in section 5, Regulation VII of 1822¹, were intended to have a prospective effect only, and to be applicable solely to settlements made under that Regulation, and to recusance tendered at the completion of such settlements.

Intention of rules as to *malikana* in section 5, Regulation VII, 1822.

12. It is further enacted that the village-accounts which are required to be kept in such manner and form as has heretofore been the custom, or in such other mode as may hereafter be prescribed by the ²[Board] of Revenue shall be prepared in duplicate sets—one for deposit in the office of *patwari*, and one for deposit in the office of Collector of the district in which the respective estates or tenures may be situated, and, wherever the office of a *kanungo* may be established, a third copy shall be prepared and deposited in that office.

Village-accounts.

13. The several accounts required for deposit in the *pargana* and *Zila* Revenue-offices, as above stated, instead of being delivered at the expiration of every six months, as prescribed by the rules at present in force, shall be furnished in such mode and at such periods as the ²[Board] may direct.

Accounts to be furnished according to directions of Board.

They shall be open to the inspection of every person concerned desirous of examining them.

14, 15. [*Penalties to landholders for not conforming to rules regarding village accounts.*] Rep. by the Bengal Rent Act, 1859 (X of 1859).

16. It shall be competent to the ³[Provincial Government] to appoint to any revenue-jurisdiction a Deputy Collector, with the powers hereinafter specified.

Appointment of Deputy Collector.

17. [*Persons eligible to office, and how appointed.*] Rep. by the Repealing and Amending Act, 1914 (X of 1914).

¹The Bengal Land-revenue Settlement Regulation, 1822.

²This word was substituted for the word "Boards" by the Amending Act, 1903 (1 of 1903).

³These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Reg. IX of 1833.]

(Secs. 18—25.)

18. [*Monthly allowance how fixed, and susceptible increase.*] *Rep. by the Repealing and Amending Act, 1914 (X of 1914).*

19. [*Solemn declaration to be made by Deputy Collectors.*] *Rep. by the Indian Oaths Act, 1873 (X of 1873).*

Subordination
of Deputy
Collectors.

20. The Deputy Collectors appointed under this Regulation are to be in all respects subordinate to the Collector under whom they may be placed, and are required to perform all duties assigned to them by that functionary.

Duties in
which Collec-
tors may employ
them.

21. It will be at the discretion of the latter officer to employ them in settlement-duties under the provisions of Regulation VII, 1822¹, in the superintendence of the Government *khas mahals*, and generally in the transaction of any other part of the duties of a Collector.

Their proceed-
ings how re-
corded and
how appeal-
able.

22. All proceedings held by a Deputy Collector appointed under this Regulation shall be recorded in his own name and on his own responsibility, subject to the revision and control of the Collector and appealable to the superior authorities in the usual course.

Collector may
resume duties
committed to
Deputy.

23. Provided always that the Collector is competent to resume the duties which he may have committed to the Deputy, assigning his reasons for so doing for the information of the Commissioner.

Interference
by Commis-
sioners with
arrangements
of Collectors
for employ-
ment of
Deputies.

24. Provided also that the Revenue Commissioners, whenever they think proper, may interfere with any arrangements made by the Collectors for the employment of the Deputies, or the distribution of business to be assigned to those functionaries, subject to the general control vested in the ²* * * Board of Revenue or the ³[Provincial Government], as the case may be.

25. [*Rules regarding dismissal of Deputy Collectors.*] *Rep. by the Repealing and Amending Act, 1914 (X of 1914).*

¹The Bengal Land-revenue Settlement Regulation, 1822.

²The word "*Sadar*" which was repealed by the Amending Act, 1903 (1 of 1903), is omitted.

³These words were substituted for the word "Government" by Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

PART II.—LOCAL ACTS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL, LOCAL ACTS OF THE INDIAN LEGISLATURE AND CENTRAL ACTS AS MODIFIED IN THEIR APPLICATION TO BENGAL.

Act X of 1836.

(The Bengal Indigo Contracts Act, 1836.)¹

(11th April 1836.)

1. [*Repeal of cl. 3 of s. 5 of Ben. Reg. VI of 1823.*]

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In section 2, for the words, "letters and figures " , Regulation VI, 1823, of the Bengal Code" substitute the words and figures "of the Bengal Indigo Contracts Regulation, 1823".

(Substituted by West Bengal Act VII of 1948, section 2 and the First Schedule.)

[No. 43, dated the 5th June, 1949.]

the specific parcel of land from which the plant may have been produced.

3. "When a lawful contract shall have been made between a *raiyat* and another party, by which contract the *raiyat* shall have bound himself to cultivate indigo-plant for the other party, or to deliver indigo-plant to the other party, and when the other party shall have

to be
y
desiring
ive
plant
to be
ed to

Right of suit
of person
making
advances for
cultivation or
delivery of
indigo-plant
when breach
of contract is
induced by
third person.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903).

LOCAL EXTENT.—This Act has been declared by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in west Jalpaiguri, in the Jalpaiguri district.

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4 (2).

²Formal words in ss. 2 and 3, which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The Bengal Indigo Contracts Regulation, 1823.

(Secs. 4, 5.)

advanced money to the *raiyat* for the purpose of enabling the *raiyat* to fulfil such contract, then if any other person, knowing that such contract exists and that such advance has been made, shall prevail upon the *raiyat* to break such contract, the party who made the advance shall be entitled to proceed by civil action against the person who shall have so prevailed on the *raiyat*, as well as against the *raiyat*, and to recover from him or them, jointly or severally, damages to the extent of the injury sustained, together with costs of suit:

Provided always that nothing in this section contained shall be construed to give a right of action against any person in consequence of any act which that person may have done for the purpose of procuring payment

Bar of suit for act done to recover debt or secure performance of lawful contract.

Page 320—

Power to examine both plaintiff and defendant in suit, and to award compensation to successful defendant.

In section 4, for the words, letters and figures "Regulation VI of 1823, of the Bengal Code" substitute the words and figures "the Bengal Indigo Contracts Regulation, 1823".
(Substituted by West Bengal Act VII of 1948, section 2 and the First Schedule.)

[No. 43, dated the 5th June, 1949.]

and occasioned by the proceeding.

5. [Power to refer certain suits to a Principal Sadar Amin or Sadar Amin.] Rep. by the Repealing Act, 1868 (VIII of 1868).

¹Formal words in s. 4, which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The Bengal Indigo Contracts Regulation, 1823.

Act XXI of 1836.

(The Bengal Districts Act, 1836.)¹

(19th September 1836.)

²It shall be lawful for ³[the 'Provincial Government, * * * by notification in the 'Official Gazette'], to create new *zilas* in any part of the Presidency of Fort William in Bengal * * * Power to create new *zilas*.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903).

LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri and Western Duars, in the Jalpaiguri district.

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4 (2).

²Formal words repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words "the Governor General in Council, by an Order in Council," in the original text, are to be read as if the words "the Local Government, with the previous sanction of the Governor General in Council, by notification in the local Official Gazette" were substituted therefor—see the Amending Act, 1903 (1 of 1903).

⁴The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵The words "with the previous sanction of the Governor General in Council" which were repealed by the Devolution Act, 1920 ('XXXVIII of 1920), are omitted.

⁶The words "Official Gazette" were substituted for the words "local official Gazette" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁷The words "and to alter the limits of existing *zilas*" which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

Act IX of 1847.

(The Bengal Alluvion and Diluvion Act, 1847.)¹

(8th May 1847.)

An Act regarding the assessment of lands gained from the sea or from rivers by alluvion or dereliction within the Provinces of Bengal, [Bihar and Orissa].

1. It is hereby enacted that such parts of the Regulations of the Bengal Code as establish tribunals and prescribe rules of procedure for investigations regarding the liability to assessment of lands gained from the sea or from rivers by alluvion or dereliction, or regarding the right of Government to the ownership thereof, shall, from the date of the passing of this Act, cease to have effect within the Provinces of Bengal, [Bihar and Orissa]; * * * *; and that no measures shall hereafter be taken for the assessment of such lands, or for the assertion of the right of Government to the ownership thereof except under the provisions of this Act.

Repeal of enactments.

2. ³[The expression "Province of Orissa", in this Act, shall be taken to mean only so much of the Province of Orissa as was on the 8th May, 1847⁴, subject to the Government of Bengal.]

"Province of Orissa" defined.

3. ⁵Within the said Provinces it shall be lawful for the ⁶[Provincial Government], in all districts or parts

Power to direct new surveys of riparian lands.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903).

LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal—see the title.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4 (2).

²The words "and that all such investigations pending before the Collectors and Deputy Collectors in the said Provinces at the said date shall forthwith be discontinued" which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³Formal words in ss. 2 and 3, which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴The words and figures "as was on the 8th May, 1847" were substituted for the words "as is" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were substituted for the words "Government of Bengal", *ibid.*

(Secs. 4—6.)

of districts of which a revenue-survey may have been or may hereafter be completed and approved by Government, to direct from time to time, whenever ten years from the approval of any such survey shall have expired, a new survey of lands on the banks of rivers and on the shores of the sea, in order to ascertain the changes that may have taken place since the date of the last previous survey, and to cause new maps to be made according to such new survey.

Date of
approval of
surveys.

4. * * * * * The approval of the revenue-surveys of districts or parts of districts which may be hereafter surveyed shall be deemed to have taken place on such day as may be specified as the day of such

VOLUME I.

Deduction
from *jama*
estates
which la
have bee
washed :

Page 324—

After section 5, insert the following section:—

“5A. Whenever any land which has been washed away from or lost to any estate paying revenue directly to Government reappears above the

water and reforms at the original site of such land, the proprietor of the estate from the *sadar jama* of which a deduction has been made under section 5 on account of the land so washed away or lost, shall have the right to resume immediate possession of the land so reformed, subject to the payment of revenue in respect thereof with effect from the date on which such revenue is assessed. Such revenue shall bear to the *sadar jama* the same proportion as the area of the land so reformed bears to the area of the remainder of the estate. This assessment, with the reasons thereof, shall be forthwith reported by the local Revenue-authorities for the information and orders of the Board of Revenue, whose orders thereupon shall be final.”

Assessment
increment
revenue-p
ing estate

(Inserted by Ben. Act XVII of 1940, section 2.)

[No. 9, dated the 29th November 1940.]

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In section 6, after the words “that land” insert the words, figure and letter “, other than land to which the provisions of section 5A apply,”.

(Inserted by Ben. Act XVII of 1940, section 3.)

[No. 9, dated the 29th November 1940.]

of 1847.]

(Secs. 7—9.)

of revenue], they shall without delay assess the same with a revenue payable to Government according to the rules in force for assessing alluvial increments, and shall report their proceedings forthwith to the ¹* * Board of Revenue, whose orders thereupon shall be final.

7. [*Local Revenue-authorities to take possession of a new island, and to assess and settle the land.*] Rep. by the Bengal Alluvion Act, 1868 (Ben. Act IV of 1868).

8. [*Exception of certain suits from operation of Act.*] Rep. by the Repealing Act, 1870 (XIV of 1870).

9. ²* * no suit or action in any Court of Justice shall lie against the ³[Crown] or any of its officers on account of anything done in good faith in the exercise of the powers conferred by this Act.

Indemnity
clause.

¹The word "*Sadar*" which was repealed by the Amending Act, 1903 (I of 1903), is omitted.

³Formal words in s. 9 which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

The words "except as regards the proprietary right to islands", which were repealed by the Amending Act, 1903 (I of 1903), are also omitted.

²This word was substituted for the word "Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

Act XX of 1848.

(The Bengal Landholders' Attendance Act, 1848.)¹

(23rd September 1848.)

An Act for better enforcing the attendance of proprietors and farmers of land before Collectors of land-revenue in the Lower Provinces of the Bengal Presidency.

Whereas, by sundry Regulations of the Bengal Code, provision is made for the imposition of a daily fine by the Board of Revenue or other authority exercising the powers of that Board on any proprietor or farmer of land, subject to the provisions contained in the said several Regulations, who, when duly summoned by the Collector or other officer exercising the powers of Collector, shall omit or refuse to attend, or to cause his officer or agent to attend, or to furnish the accounts or documents required, and shall not show sufficient cause for such omission; and it is further provided that the fine, when confirmed by Government, is to be levied by the same process as is prescribed for the recovery of arrears of revenue;

Preamble.

And whereas in many cases, by the delay thus occasioned, the whole burden of the penalty is greatly increased beyond what would be necessary if summary power were given to the officer by whom the requisition is made to impose and levy reasonable fines, subject to review by the Commissioner of Revenue and other superior authority;

It is enacted as follows:—

1. If any proprietor or farmer of land shall omit or refuse to attend, or to cause his officer or agent to attend, when duly summoned by the Collector, in any case specified in any of the said Regulations, by the time prescribed in the notice issued by the Collector, or

Penalty on landholders not attending when summoned by Collector.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal—see the title.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

(Secs. 2—7.)

Levy of fine.	shall omit or refuse to furnish the accounts or documents required, and shall not show sufficient cause for such omission, the Collector may impose of his own authority such daily fine, to be payable daily until compliance with the requisition, as he may think adequate to the situation and circumstances in life of the defaulter, not exceeding in any case the daily fine of fifty rupees: and the amount of such fine, accruing due from time to time, may be levied without further confirmation by the same process as is prescribed for the recovery of arrears of revenue.
Report of imposition and levy of fine.	2. The Collector shall forthwith report the imposition of every such fine, and the amount thereof, and also from time to time the amount levied, to the Commissioner of Revenue, who shall report the same for the information of the ¹ [Provincial Government].
Appeal from Collector's orders.	3. Every order passed by a Collector under this Act shall be appealable in the usual manner to the Commissioner of Revenue and other superior authority; but no such appeal shall avail to prevent the levy of any fine so imposed pending the appeal.
Special report of levy exceeding five hundred rupees.	4. Whenever the amount levied under any such order issued for any default by authority of a Collector under this Act shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of Revenue; and no further levy for such default shall be made otherwise than by authority of the Commissioner of Revenue.
Saving of power to fine.	5. Nothing in this Act contained shall be deemed to repeal the power of imposing daily fines and of levying the fines so imposed in the manner prescribed by the said several Regulations.
"Collector" defined.	6. The word "Collector" used in this Act shall be taken to mean any person lawfully exercising the powers of a Collector.
Extent of Act.	7. <i>This Act shall not extend to the North-West Provinces of the Presidency of Bengal.</i>

¹These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Act XXIII of 1850.

.(The Calcutta Land-revenue Act, 1850.)¹

(8th June 1850.)

An Act for securing the Land-Revenue of Calcutta.

Whereas it is expedient that the land-revenue accruing due to the ²[Crown] within Calcutta be ascertained and collected in as summary a manner as in other parts of the territories under the government of the ²[Crown];

Preamble.

It is declared and enacted as follows:—

1. All assessable lands, not the property of the ²[Crown], within the town of Calcutta, of which the rate of assessment is not known, or which have not heretofore been assessed, shall be assessed at the rate of three annas for each *cottah*.

Assessment of unassessed lands.

2. *Lakhiraj* tenures of land in Calcutta, of which uninterrupted possession has been held exempt from assessment for sixty years, shall be valid: no other *lakhiraj* tenures of land in Calcutta shall be deemed valid unless the same are or shall be held under an unexpired grant from the British Government.

Lakhiraj tenures.

3. If any owner of land within Calcutta, or any person holding land within Calcutta on lease from the ²[Crown] shall, upon the written demand of the Collector, refuse or neglect to pay any sum at which the land is assessed, or for which he is liable under his lease, the Collector may levy the same by distress and sale of the goods and chattels, wherever found, of such owner or lessee, or, after written demand upon the tenant or occupier, and his refusal or neglect to pay the sum lawfully demanded, by distress and sale of any goods and chattels found upon the land, in the manner appointed for regulating distress for small rents in Calcutta by ³[the Presidency Small Cause Courts Act, 1882,

Levy, by distress and sale, of unpaid assessments.

XV of 1882.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Act extends only to Calcutta—see the title and preamble.

²This word was substituted for the words “East India Company” by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words and figure were substituted for the words and figures “Act VII, 1847,” by s. 3 of the Presidency Small Cause Courts Act, 1882 (XV of 1882).

(Secs. 4—8.)

Powers of
Collector for
distress and
sale.

Chapter VIII]; and, for the purpose of any such distress and sale, the Collector shall have all the powers of ¹[the Judges of the Court of Small Causes at Calcutta]; and the Collector shall have power to appoint any of his officers to perform the duties of bailiffs and appraisers, and of the chief clerk of the said Court, ²* * and all the provisions of the said Act relating to ¹[the Judges of the Court of Small Causes at Calcutta] and their Court shall be deemed to apply to the said Collector and his office in the execution of this Act.

Deduction by
occupier from
landlord's
rent.

4. In the case of payment by any tenant or occupier not holding immediately under the ³[Crown], or the seizure and sale of his property, he may deduct the amount of the payment or levy from the next payment of rent to his landlord.

Priority of
Government
claim.

5. The claim of the ³[Crown] for land-revenue or rent has priority over all other claims upon the land, or to which property distrained upon the land may be liable.

Distress not
stayed unless
amount
lodged.

6. If the Collector's claim for arrears of rent is disputed, the process of distraint and sale shall not be stayed, unless the amount claimed be lodged with the Collector.

Recovery of
arrears.

7. Arrears of rent or revenue which shall become due to the ³[Crown] within the town of Calcutta after the passing of this Act shall be recoverable at any time within six years next after the same are due, or next after an acknowledgment of the same in writing has been given by the person by whom the same is payable or his agent, and not afterwards.

Inquiry into
claims to
hold land
lakhiraj.

8. When a claim to hold land *lakhiraj* or free of assessment shall be set up under this Act, the Collector shall inquire into the claim, taking such evidence as

¹The words "the Judges of the Court of Small Causes at Calcutta" were substituted for the words "a Commissioner of the Court for recovery of small debts referred to in the said Act" and "the said Commissioners", respectively, by s. 3 of the Presidency Small Cause Courts Act, 1882 (XV of 1882).

²The words "as provided by the said Act," were repealed, *ibid*.

³This word was substituted for the words "East India Company" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1850.]

(Secs. 9—13.)

the claimant may offer or the public records supply, and shall report his proceedings and decision in the case for the consideration of the Revenue Commissioner. If the Commissioner is satisfied of the validity of the claim, he shall make an order accordingly, and such order shall be final. If he is not satisfied of the validity of the claim, he shall direct the Collector to assess the land, leaving the claimant to contest the Collector's demand in the Civil Courts as herein provided.

9. Any person obstructing or molesting the Collector or any of his subordinate officers in the execution of their duty shall, on conviction before a Magistrate of the town of Calcutta, be liable to a fine not exceeding five hundred rupees, and, in default of payment, to imprisonment in the common jail for a term not exceeding six months, or until the fine is sooner paid.

Penalty for obstructing Collector.

10. The Collector may punish any contempt committed in his presence in open *cutcherry* or office, by fine not exceeding two hundred rupees, and, in default of payment, by imprisonment in the common jail for a term not exceeding one month: from every such order, or fine or imprisonment, an appeal shall lie to the Commissioner, whose decision shall be final.

Power to punish contempts.

11. The Collector shall act in the execution of this Act under the usual control of the superior Revenue-authorities.

Control of Collector.

12. The ground-rents payable to the '[Crown] from lands in Calcutta are revenue within the meaning of the Act of Parliament 21 Geo. 3, c. 70², and the Supreme Court of Judicature established by Royal Charter at Fort William in Bengal has not any civil jurisdiction concerning the said ground-rents or concerning anything ordered or done in the assessment or collection thereof.

Bar of Jurisdiction of Supreme Court.

13. All actions concerning any trespass or injury committed by any Revenue-officer acting under colour of this Act, or concerning any claim in respect of any goods taken by, or any moneys paid to, any Revenue-officer under this Act, or concerning any claim of rent or revenue on the part of the '[Crown] under this Act, shall be tried and determined in the Civil Courts established by the '[Crown] at the *sadar* station of the 24-Parganas, notwithstanding that the cause of action in

Jurisdiction of Courts of 24-Parganas.

¹See foot-note 3 on p. 330, *ante*.

²The East India Company Act, 1780.

The Calcutta Land-revenue Act, 1850.

[Act XXIII of 1850.]

(*Sec. 14.*)

Limitation.

respect of which such action is brought arose, or the defendant therein resides, within the limits of the town of Calcutta: and every such action shall be brought within six months after the cause of action arose, and not afterwards.

"Collector,"
"Commissioner."

14. The words "Collector" and "Commissioner" used in this Act shall be taken to mean any person lawfully appointed to exercise the powers of Collector and Commissioner respectively.

Act XXV of 1850.

(The Forfeited Deposits Act, 1850.)¹

(14th June 1850.)

*An Act for the forfeiture to Government of deposits made on incomplete sales of land under Regulation VIII², 1819³ * * *.*

Whereas *patnidars* ⁴* * * fraudulently avail themselves of the provision in section 9, Regulation VIII, 1819², of the Bengal Code ⁵* * * that forfeited deposits at sales of land ⁶* * * for arrears of rent shall be applied as if they were purchase-money; It is enacted as follows:—

Preamble.

1. [*Repeals.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

2. Any such forfeited deposit shall be applied to defray the expenses of the sale, and the surplus shall be forfeited to Government.

Application of forfeited deposits.

¹SHORT TITLE.—This short title was given by the Amending Act 1897 (V of 1897).

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4 (2).

²The Bengal Patni Taluks Regulation, 1819.

³The words and figures “and Act IV, 1846”, which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁴The words “and judgment-debtors” were repealed, *ibid.*

⁵The words and figures “and in section 5, Act IV, 1846”, were repealed, *ibid.*

⁶The words “in execution of decrees or” were repealed, *ibid.*

Act VI of 1853.

(The Rent Recovery Act, 1853.)¹

(15th April 1853.)

An Act relating to summary suits for arrears of rent, to sales of patni taluks and other saleable tenures, and to sales of land in satisfaction of summary decrees for rent.

[Whereas by Regulation VIII, 1831,² of the Bengal Code, the hearing and decision of summary suits or claims relating to arrears or exactions of rents were transferred from the Judges of the Zila or City Courts to the Collectors of land revenue of the several districts; Preamble.

And whereas by Regulation VII, 1832,³ of the Bengal Code, the conduct of sales of patni taluks and other saleable tenures under Regulations VIII, 1819,⁴ and I, 1820,⁵ of the same Code, and the performance of other acts preparatory to, or connected with, such sales, were transferred to the Collector or Deputy Collector of Land-revenue or Head Assistant to the Collector or Deputy Collector, subject to an appeal as therein provided;

And whereas by Act VIII, 1835,⁶ the power theretofore vested in the Judge of the Diwani Adalat of selling land in satisfaction of summary decrees for rent was transferred to the Collectors of Land-revenue, and it was enacted that all sales for the recovery of arrears of rent held under clause 7, section 15, Regulation VII, 1799,⁷ should be conducted by the Collector, his Deputy or duly authorized Assistant, and that ten days' notice should be given of such sales by advertisement to be stuck up at the cutchery of the Zila Court or local Adalat and that of the Collector * * * * *];

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4 (2).

²Ben. Reg. VIII of 1831 was repealed by the Bengal Rent Act, 1859 (X of 1859).

³Ben. Reg. VII of 1832 was repealed by the Bengal Civil Courts Act, 1871 (VI of 1871).

⁴The Bengal Patni Taluks Regulation, 1819.

⁵The Bengal Patni Taluks Regulation, 1820.

⁶Act VIII of 1835 and Ben. Reg. VII of 1799 were repealed by the Repealing Act, 1874 (XVI of 1874).

⁷Portion of the preamble relating to Act XXV of 1850 and Regulation VIII of 1819, s. 9, which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

(Secs. 1—3.)

And whereas doubts may be entertained as to who ought to exercise the jurisdiction transferred by the abovementioned Regulations and Acts, where lands situate within the *zila* or other district of one Collector form part of an entire estate paying revenue to the Collector of another *zila* or district;

in order therefore to avoid such doubts, and also to define who are the proper officers to exercise such jurisdictions in cases where lands are situate in a district assigned to an independent Deputy Collector, and also in cases where lands held in *patni* or other tenure at one entire rent are situate in two or more Collectorates

It is enacted as follows :—

Conduct of
sale of lands
when all in
one collectorate ;

1. If the lands which may be the subject of any such sale, or to the rent of which any such suit may relate, be all situate in one collectorate, the Collector of such collectorate is the Collector to conduct the sale or to hear and decide the suit.

when in two
or more
collectorates.

If one *taluk* or tenure shall comprise lands situate in two or more collectorates, or if any lands situate in two or more collectorates be held under one lease or engagement or at one entire rent, the Collector in whose collectorate the greater part of such lands shall be situate is the Collector to conduct the sale of such *taluk* or tenure or of such lands, and to hear and decide any summary suit relating to arrears or exactions of rent in respect thereof.

Procedure in
case of doubt
as to officer
having
jurisdiction.

2. If a Collector to whom application shall be made to exercise any of the powers abovementioned shall entertain any doubt as to whether the lands or the greater part of them are situate within his collectorate, he shall report the case for the order of the Board to which he is subordinate, and, if ordered by such Board to proceed in the matter, such order shall be conclusive upon the question of his jurisdiction.

“Collectorate”
defined.

3. The word “Collectorate” in this Act means the *zila* or other district to which a Collector is appointed, and no lands situate beyond the limits of such *zila* or district shall be deemed to be situate within the collectorate by reason of their forming part of an estate paying revenue to the Collector thereof.

¹The words “and to prevent any such decision or sale already made from being held invalid upon the ground of its having been made by an officer of a wrong district,” which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

of 1853.]

(Secs. 4—10.)

4. An independent Deputy Collector may, within his Deputy Collectorate, exercise all the powers and jurisdictions of a Collector with which he may be entrusted, in the same manner and to the same extent as a Collector may do within his Collectorate; and, with reference to the exercise of such powers and jurisdictions, his Deputy Collectorate shall be deemed a Collectorate, and he shall be deemed to be a Collector within the meaning of this Act.

Powers and jurisdiction of independent Deputy Collector.

5. An independent Deputy Collector is an officer appointed by ¹[the Provincial Government] to act as Deputy Collector independently of a Collector, whether his office is one for the receipt of revenue or not.

"Independent Deputy Collector."

A Deputy Collectorate is the district within which an independent Deputy Collector is directed by ¹[the Provincial Government] to act.

"Deputy Collectorate."

6. In cases of sales by an independent Deputy Collector under the abovementioned Regulations or Act, any notice thereby required to be stuck up at the *cutcherry* of the Collector may be stuck up at the *cutcherry* of the Deputy Collector.

Publication of notice of sale by independent Deputy Collector.

7. An independent Deputy Collector may exercise the powers assigned to him over any part of his Deputy Collectorate in public *cutcherry*, in whatever part of his Deputy Collectorate the same may be situate or held.

Exercise of powers of independent Deputy Collector.

8. Any notice required by the abovementioned Regulations or Act to be given by advertisement to be stuck up at the *cutcherry* of the Zila Court or local *Adalat* shall be stuck up at the Zila Court or local *Adalat* within the jurisdiction of which the lands to be sold, or the greater portion of them, as the case may be, shall be situate.

Publication of notice required by law to be advertised.

9. [*Order, etc., not to be disputed on ground that Collector was not the Collector of proper district.*] Rep. by the Repealing Act, 1873 (XII of 1873).

10. [*Extension of certain enactments to all sales under Act VIII of 1835.*] Rep. by the Bengal Rent Recovery (under-tenures) Act, 1865 (Ben. Act VIII of 1865).

¹These words were substituted for the word "Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

Act XVIII of 1856.

(The Calcutta Land-revenue Act, 1856.)¹

(23rd August 1856.)

An Act relating to the administration of the public revenues in the Town of Calcutta.

Whereas it is expedient that the Collector of Calcutta * * * should have power to employ any Deputy Collector subordinate to him, in the performance of any part of the duties of his office; it is enacted as follows:—

Preamble.

1. [*Regulations modified.*] Rep. by the Amending Act, 1891 (XII of 1891).

2. [*Collector to have charge of collection of stamp-duty in Calcutta.*] Rep. by the General Stamp Act, 1869 (XVIII of 1869).

3. It shall be lawful for the Collector of Calcutta to employ any Deputy Collector subordinate to him in the performance of any part of the duties of his office under * * * Act XXIII of 1850⁴; and all Rules, Regulations and Acts relating to the office of Deputy Collector shall be of the same force within the town of Calcutta as in other parts of the territories subject to the Presidency of Fort William in Bengal.

Collector may entrust any part of his duties to his Deputy.

¹SHORT TITLE.—This short title was given by the Amending Act 1903 (1 of 1903).

²The words "should have charge of the collection of the stamp-duty within the town of Calcutta, and that he" which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³The words and figures "the said Regulation, or under Act 11 of 1849, or" were repealed, *ibid*.

⁴The Calcutta Land-revenue Act, 1850.

Act XIII of 1857.

(The Opium Act, 1857.)

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Preamble.

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- 1,2. (*Repealed.*)
3. Appointment of officers to superintend provisions of opium.
4. Officers amenable to Civil Courts.
Bar of suit without previous application to Agent for redress.
5. Sanction to suit by Agent.
6. Power of Central Government to appoint officer to conduct suits.
7. Central Government to fix limits of cultivation and price to be paid to cultivators.
8. Issue of licenses.
What to be specified in license.
9. Cultivator to have option to engage to cultivate or not.
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23. Duty of police and other officers to give information of illegal cultivation.
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25. Landholders, etc., may attach in cases of illegal cultivation.
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28. Punishment for repetition of offences.
29. Place of imprisonment under section 28.
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Power to prescribe rules for delivery to officers of the Crown.
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Act XIII of 1857.

(The Opium Act, 1857.)¹

(6th June 1857.)

An Act to consolidate and amend the law relating to the cultivation of the poppy and the manufacture of opium in the Presidency of Fort William in Bengal.

Whereas the existing law relating to the cultivation of the poppy and the manufacture of opium on account of Government is in some respects inconsistent with the practice which now obtains under agreement between the Opium Agents and the cultivators, and it is expedient that such inconsistency should be removed; Preamble.

And whereas it is also expedient * * * that the laws for preventing the illicit cultivation of the poppy, and for regulating the cultivation of the poppy and the manufacture of opium on account of Government, should be consolidated and amended;

It is enacted as follows:—

1. [*Laws repealed.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

2. [*Prohibition of poppy cultivation and opium manufacture.*] *Rep. by the Opium Act, 1878 (I of 1878).*

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903).

LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal—see the title.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4(2).

*The words "that certain obsolete Regulations relating to the provision of opium should be formally repealed, and," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

(Secs. 3—5.)

Appointment of officers to superintend provisions of opium.

¹3. (1) The ²[Central Government], after consideration of any recommendation made in this behalf by the ³[Provincial Government] of the province for which the appointment is to be made, may appoint Opium Agents to superintend the provision of opium for ⁴[the Central Government]:

(2) The ²[Central Government] may appoint officers to assist the Opium Agents, under the designation of Deputy Agents, district opium officers, assistant opium officers, or such other designations as ⁵[it] may think fit, and may delegate to the Opium Agents the power of appointing all or any of such officers.

(3) Unless the ²[Central Government], after consideration of any recommendation made by the ³[Provincial Government] in this behalf, otherwise directs, the Collector shall be Deputy Agent for his district.

(4) The ²[Central Government] may by rule prescribe the powers and duties of officers appointed under this section.

Officers amenable to Civil Courts.

4. The Opium Agents, and their subordinate officers of every description, are declared amenable to the Civil Courts for all acts done by them in their official capacity, except as otherwise herein provided.

Bar of suit without previous application to Agent for redress.

But no suit shall be instituted against an Agent, or any subordinate officer, for any act done in his official capacity, unless the person who shall consider himself aggrieved by the act of such Agent or officer shall have first made application for redress to the Agent himself.

In the event of such person not being satisfied with the order which the Agent may pass upon his application, it shall then be competent to him either to lay his case by petition before ⁴[the Central Government], or at once to seek redress in the Civil Court.

Sanction to suit by Agent.

5. The Opium Agents shall not in their official capacity institute any suit in a Civil Court without the previous sanction of ⁴[the Central Government].

¹Section 3 was substituted for the original section 3 by s. 2 and the Sch. of the Opium (Amendment) Act, 1925 (XXVII of 1925).

²These words were substituted for the words "Governor General in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "Local Government", *ibid.*

⁴These words were substituted for the word "Government" by the 1st Sch., *ibid.*

⁵This word was substituted for the word "he" by paragraph 5(2), *ibid.*

of 1857.]

(Secs. 6—9.)

¹6. ²[The Central Government] may take upon itself, or entrust to an officer specially appointed for the purpose, the superintendence of the prosecution or defence of any suit or appeal in which ²[the Central Government] or an Agent, or any other officer subordinate to ²[the Central Government], may be engaged, instead of leaving such superintendence to the Agent or any other officer.

Power of Central Government to appoint officer to conduct suits.

7. * * * ²[The Central Government] shall from time to time fix the limits within which licenses may be given for the cultivation of the poppy on account of ²[the Central Government].

Central Government to fix limits of cultivation and price to be paid to cultivators.

²[The Central Government] shall from time to time fix the price to be paid to the cultivators for the opium produced.

The price shall be fixed at a certain sum per seer of eighty tolas for opium of a certain standard consistence, and shall be subject to a rateable reduction according to a scale sanctioned by ²[the Central Government], for opium of a consistence below the standard.

8. The ⁴[district opium officers] or other officers entrusted with the superintendence of the cultivation shall, at the proper period of the year, issue licenses to the cultivators who may choose to engage to cultivate the poppy and to deliver the produce to the officers of ²[the Central Government] at the established rates.

Issue of licenses.

Every license shall specify the number of *bighas* which the party engages and is authorized to cultivate, and shall be in such form as the Agent, with the sanction of ²[the Central Government], may direct.

What to be specified in license.

A counterpart-engagement, in conformity with the tenor of the license, shall be taken from the cultivator.

9. It shall be at the option of every cultivator to enter into engagements for the cultivation of the poppy or not as he may think fit; and any ⁵[district opium officer] or other officer as aforesaid, or any inferior officer employed in the provision of opium, who shall compel, or use any means to compel, any cultivator to enter into engagements, or to receive advances, for the cultivation

Cultivator to have option to engage to cultivate or not. Officers compelling cultivator to engage liable to be dismissed.

¹Section 6 was substituted for the original s. 6 by s. 2 and the Sch. of the Opium (Amendment) Act, 1925 (XXVII of 1925).

²See foot note ⁴ on p. 344, *ante*.

³The words "The Board of Revenue, with the sanction of" were omitted, by s. 2 and the Sch. of the Opium (Amendment) Act, 1925 (XXVII of 1925).

⁴These words were substituted for the words "Sub-deputy Agents" by s. 2 and the Sch., *ibid*.

⁵These words were substituted for the words "Sub-deputy Agent", *ibid*.

(Secs. 10-12.)

of the poppy, shall be liable to be dismissed from his situation.

District Opium Officer may withhold license to cultivate. Appeal.

It shall be at the option of the ¹[district opium officer] or other officer as aforesaid to withhold a license from any cultivator whenever he may think proper so to do.

Any person to whom a license has been refused may appeal to the Agent and the decision of the Agent shall be final.

Penalty on cultivator receiving advances and not cultivating full quantity of land. Adjudication of penalty.

10. If it shall be found that any cultivator who has received advances from ²[the Crown] has not cultivated the full quantity of land for which he received such advances, he shall be liable to a penalty of three times the amount of the advances received for the land which he has failed to cultivate; and the said penalty may be adjudged by the Deputy Agent or Collector, on the complaint of the ¹[district opium officer] or other officer as aforesaid.

Appeal.

Any person dissatisfied with the judgment of the Deputy Agent or Collector may appeal to the Agent, and the decision of the Agent shall be final.

Delivery of opium produced.

11. All opium the produce of land cultivated with poppy on account of ³[the Central Government] shall be delivered by the cultivators to the ⁴[district opium officers] or ⁵[other officers duly authorised to receive such opium], or shall be brought by them to the *sadar* factory, as the Agent may direct.

Opium not liable to distress or attachment.

And no such opium shall be liable to be distrained or attached by a *zemindar* or other proprietor, or a farmer of land, for the recovery of arrears of rent, or by any other creditor of a cultivator under any order or decree of Court, but the sum due to the cultivator on account of such opium may be attached by order of Court in the hands of the Agent or ⁶[other] officer under the rules in force for such attachments.

Value thereof may be attached.

Opium to be weighed and classified by district opium officer.

12. All opium delivered by the cultivators to the ¹[district opium officer] or ⁷[other officer authorised as

¹These words were substituted for the words "Sub-deputy Agent" by s. 2 and the Sch. of the Opium (Amendment) Act, 1925 (XXVII of 1925).

²These words were substituted for the word "Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws Order, 1937).

³See foot-note 4 on p. 344, *ante*.

⁴These words were substituted for the words "Sub-deputy Agents" by s. 2 and the Sch. of the Opium (Amendment) Act, 1925 (XXVII of 1925).

⁵These words were substituted for the words "other district-officers", *ibid*.

⁶This word was substituted for the words "of the district", *ibid*.

⁷These words were substituted for the words "other district officer", *ibid*.

of 1857.)

(Secs. 13—15.)

aforesaid] shall, before it is forwarded to the *sadar* factory, be weighed, examined and classified according to its quality and consistence by that officer, or his assistant if duly authorized by the Agent in that behalf, in the presence of the cultivators and in conformity with rules sanctioned by ¹[the Central Government].

Any cultivator who may be dissatisfied with the classification of the ²[receiving officer] shall be at liberty either to take his opium to the *sadar* factory, or to have it forwarded thither by such officer separate from the opium respecting which no dispute has arisen.

Proceeding where cultivator is dissatisfied with classification.

13. All opium forwarded by the ³[receiving] officers to the *sadar* factory, and all opium delivered at the *sadar* factory by the cultivators, shall be there weighed and examined by the Opium Examiner or other officer duly authorized in that behalf, agreeably to rules sanctioned by ¹[the Central Government]; and the quality and consistence of the opium and deductions from or additions (if any) to the standard price to be made in accordance with the said rules, shall be determined by the result of such examination.

Weighing and examination at *sadar* factory.

The decision of the Examiner, or of the Agent in cases in which a reference to the Agent may be prescribed by the said rules, shall be final and conclusive, and not open to question in any Court.

14. When opium delivered by a cultivator, either to a ³[receiving] officer or at the *sadar* factory, is suspected of being adulterated with any foreign substance it shall be immediately sealed up pending examination by the Opium Examiner, and notice of such intended examination shall be given to the cultivator.

Confiscation of adulterated opium.

If upon such examination the opium shall be found to be so adulterated, the Agent on the report of the Examiner may order that it be confiscated, and the order of the Agent shall be final and not open to question in any Court.

Adjudication of confiscation.

15. The weights and scales made use of in the *sadar* factories and at the district *kothis* shall be provided by ¹[the Central Government].

Weights and scales;

¹See foot-note 4 on p. 344, *ante*.

²These words were substituted for the words "district officer" by s. 2 and the Sch. of the Opium (Amendment) Act, 1925 (XXVII of 1925).

³This word was substituted for the word "district", *ibid*.

(Secs. 16, 17.)

Examination
thereof.

Every ¹[district opium officer] shall annually, before beginning to weigh the opium of the season, examine the weights and scales in use in his district and shall report the result of such examination to the Agent.

The Agent shall make a similar examination of the weights and scales of the *sadar* factory, and shall report the result to ²[the Central Government].

No weights or scales shall be made use of which on any such examination have not been found to be strictly accurate.

It shall be the duty of all officers who may superintend the weighing of opium to see that the opium is weighed fairly with an even beam; and the practice of taking excess weight for the purpose of turning the scale, or as an allowance for dryage and wastage, is hereby prohibited.

Adjustment
of cultivators
accounts and
recovery of
balance by
distress.

16. The accounts of the cultivators shall be adjusted annually by the ³[district opium officers or other officers duly authorised in this behalf] as soon after the conclusion of the weighing and examination as possible; and any balance that may remain due from any cultivator, or from any *matho* or intermediate manager, may be recovered by the ⁴[adjusting officer] by distress and sale of the property of the defaulter or of his surety, in the same manner and under the same rules as the property of defaulting cultivators in estates held *khas* may be distrained and sold by the Collector for the recovery of an arrear of rent or revenue:

Sanction to
issue of
warrant.

Provided that no warrant of distress and sale shall be issued by any ⁴[adjusting officer] without the sanction of the Agent previously obtained.

Penalty on
officers taking
bribes.

17. Any officer of the Opium Department who shall receive any fee, gratuity, perquisite or allowance, either in money or effects, under any pretence whatsoever, from any cultivator, or from any other person employed or concerned in the provision of opium, other than the authorized allowances of his situation, shall be dismissed from his office, and, on conviction before a Magistrate, shall be liable to a fine not exceeding five hundred rupees.

¹These words were substituted for the words "district-officer" by s. 2 and Sch. of the Opium (Amendment) Act, 1925 (XXVII of 1925).

²See foot-note 4 on p. 344, *ante*.

³These words were substituted for the words "district-officers" by s. 2 and Sch. of the Opium (Amendment) Act, 1925 (XXVII of 1925).

⁴These words were substituted for the words "district officer", *ibid*.

of 1857.]

(Secs. 18—20.)

18. If any *zamindar* or other proprietor of land, or any farmer of land shall exact from any *raiyat* on account of his poppy land any illegal cess or any higher rate of rent than he is lawfully entitled to demand, the *raiyat*, or the ¹[district opium officer] or ²[other officer duly authorised in this behalf], may institute a suit before the Collector, and recover from such proprietor or farmer the sum exacted by him in excess of his lawful demand, together with a penalty of treble the amount of such excess; and such suit shall be tried according to the rules prescribed for suits instituted before a Collector relating to arrears or exactions of rent.

Exactions by landholder from *raiyat* recoverable, together with penalty, in summary suit before Collector.

19. Any cultivator entering into engagements for the cultivation of the poppy on account of ³[the Central Government] who may embezzle, or otherwise illegally dispose of, any part of the opium produced shall be liable to a penalty not exceeding ten times the fixed price of the opium which he may be proved to have so disposed of, or to a fine not exceeding five hundred rupees if the amount of the said penalty be less than that sum, and the opium, if found, shall be liable to confiscation.

Penalty for embezzlement of opium by cultivator.

20. Any person purchasing or receiving any opium from a cultivator or other person who may have entered into engagements for the cultivation of the poppy, or who may be employed in the provision of opium on account of ³[the Central Government], or bargaining for the purchase of opium with such cultivator or person, or in any way causing or encouraging such cultivator or person to embezzle or illegally dispose of any opium,

Penalty for illegal purchase of opium from cultivator;

and any officer of the Opium Department conniving in any way at the embezzlement or illegal disposal of any opium,

and for illegal connivance at embezzlement by Opium officer.

shall be liable to a fine not exceeding one thousand rupees, unless the opium purchased, bargained for or illegally disposed of shall exceed the weight of thirty-one seers and a quarter, in which case the fine may be increased, at a rate not exceeding thirty-two rupees per seer for all such opium in excess of that weight;

and the opium, if found, shall be liable to confiscation.

¹These words were substituted for the words "Sub-deputy Agent" by s. 2 and the Sch. of the Opium (Amendment) Act, 1925 (XXVII of 1925).

²These words were substituted for the words "other district officer on his behalf", *ibid.*

³See foot-note 4 on p. 344, *ante*.

(Secs. 21—23.)

Penalty for
unlicensed
cultivation.

21. Any person who shall cultivate the poppy without license from a ¹[district opium officer] or other officer duly authorized in that behalf, and any person who shall in any way cause, encourage or promote such illegal cultivation, shall be liable to a fine not exceeding five hundred rupees, unless the quantity of land so illegally cultivated shall exceed twenty *bighas*, in which case the fine may be at the rate of twenty-five rupees per *bigha*; and the poppy plants shall be destroyed, or if any opium have been extracted from them, it shall be seized and confiscated.

If the opium shall have been extracted and shall not be seized, the offender shall be liable to a further fine not exceeding the rate of thirty-two rupees per *bigha* of land illegally cultivated.

Duty of
landholders
and others
to give
information
of illegal
cultivation.

22. All proprietors, farmers, *tahsildars*, *gumáshtas* and other managers of land shall give immediate information to the police or *abkari darogas*, or opium *gumáshtas*, or to the Magistrates, Collectors or officers in charge of the *abkari mahál*, or to the Agents, their deputies or ²[the district opium officers], of all poppy which may be illegally cultivated within the estates or farms held or managed by them; and every proprietor, farmer, *tahsildar*, *gumáshta* or other manager of land, who shall knowingly neglect to give such information, shall be liable to the penalties for illegal cultivation prescribed in the last preceding section.

Duty of police
and other officers
to give
information
of illegal
cultivation.

23. All police and *abkari darogas*, and opium *gumáshtas*, and all Native officers of ³[the Crown] of whatever description, and all *chaukidars*, *paiks* and other village police-officers, shall give immediate information to the authority to which they are subordinate when it may come to their knowledge that any land has been illegally cultivated with poppy; and such authority shall transmit the information to the ¹[district opium officer] or other officer superintending the cultivation of the poppy if in a district where the poppy is cultivated on account of ⁴[the Central Government], or to the Collector or officer in charge of the *abkari mahál* if in a district where the poppy is not so cultivated.

¹These words were substituted for the words "Sub-deputy Agent" by s. 2 and Sch. of the Opium (Amendment) Act, 1925 (XXVII of 1925).

²These words were substituted for the words "Sub-deputies", *ibid.*

³These words were substituted for the word "Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1927.

⁴These words were substituted for the word "Government", *ibid.*

of 1857.]

(Secs. 24—26.)

Every police or *abkâri daroga*, opium *gumâshta*, Native officer, *chaukidar* or other police-officer as aforesaid, who shall neglect to give such information, or shall in any respect connive at the illicit cultivation of the poppy, shall be liable to a fine not exceeding one thousand rupees if the offender be an officer of the Opium Department, or in any other case to a fine not exceeding five hundred rupees.

24. Whenever a police or *abkâri daroga* or opium *gumâshta* shall receive intelligence of any land within his jurisdiction having been illegally cultivated with poppy, he shall immediately proceed to the spot, and, if the information be correct, shall attach the crop so illegally cultivated, and report the same without delay to the authority to which he may be subordinate.

Police or
abkâri daroga
how to proceed
in case of illegal
cultivation.

He shall at the same time take security from the cultivator of the said land for his appearance before the Magistrate; and, in the event of such cultivator not giving the required security, he shall send him in custody to the Magistrate.

25. Proprietors, farmers, *tashildars*, *gumâshtas* and other managers of land shall be at liberty to attach any poppy grown in opposition to the provisions of this Act in any estate or farm held or managed by them, and shall immediately report such attachment to the nearest police or *abkâri daroga* or opium *gumâshta*, who shall thereupon proceed in conformity with the rules contained in the last preceding section.

Landholders,
etc., may attach
in cases of illegal
cultivation.

26. Except as otherwise herein provided, all fines, penalties and confiscations prescribed by this Act shall be adjudged by the Magistrate on the information of the Deputy Agent or ¹[district opium officer] in districts in which the poppy is cultivated on account of ²[the Central Government], and in other districts on the information of the Collector or officer in charge of the *abkâri mahâl*:

Adjudication
of penalties.

Provided that no information on an offence against this Act shall be admitted unless it be preferred within the period of one year after the commission of the offence to which the information refers.

¹These words were substituted for the words "Sub-deputy Agent" by s. 2 and Sch. of the Opium (Amendment) Act, 1925 (XXVII of 1925).

²These words were substituted for the word "Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Secs. 27—31.)

Imprisonment
in default of
payment of
fine.

27. When any person is sentenced to pay any fine or penalty under this Act, such person, in default of payment of the same, may be imprisoned by order of the Magistrate for any time not exceeding six months or until the fine is sooner paid.

Punishment
for repetition
of offences.

28. Whenever any person shall be convicted of an offence against this Act after having been previously convicted of a like offence, he shall be liable, in addition to the penalty attached to such offence, to imprisonment for a period not exceeding six months; and a like punishment of imprisonment not exceeding six months shall be incurred, in addition to the punishment which may be inflicted for a first offence, upon every subsequent conviction after the second.

Place of
imprisonment
under section
28.

29. Every person who shall be imprisoned under the last preceding section, or on account of the non-payment of any fine or penalty prescribed by this Act, unless such person be an officer of ¹[the Crown] or a village police-officer convicted of an offence under section 17, 20 or 23, shall be imprisoned in the civil jail.

Disposal of
fines and
forfeitures.

30. One-half of all fines and penalties levied from persons convicted of offences under sections 19, 20 and 21 of this Act, together with a reward of one rupee eight annas for each seer of opium confiscated and declared by the Civil Surgeon to be fit for use, shall upon adjudication of the case, be awarded to the officer or officers who apprehended the offender, and the other half of such fines and forfeitures, together, with a reward of one rupee eight annas for each *seer* of opium confiscated as aforesaid, shall be given to the informer.

If in any case the fine or penalty is not realized, the ²[Opium Agent] may grant such reasonable reward, not exceeding the sum of two hundred rupees, as may seem to ³[him] fit.

Central
Government
may allow free
cultivation of
poppy and
manufacture
of opium in
any district.

31. The ⁴[Central Government] may authorize, by an order ⁵*, the cultivation of the poppy and the manufacture of opium in any district or districts

¹These words were substituted for the word "Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "Board of Revenue" by s. 2 and Sch. of the Opium (Amendment) Act, 1925 (XXVII of 1925).

³This word was substituted for the word "them", *ibid.*

⁴These words were substituted for the words "Governor General of India in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵The words "of Government" were omitted by 1st Sch., *ibid.*

of 1857.]

(Sec. 32.)

without license from a ¹[district opium officer] or other officer ²[of the Crown]; and, when such order has been published, all the provisions of this Act shall cease to have effect in such district or districts:

Provided always that ³[the Central Government] may prescribe rules for the delivery of the opium so produced to officers ²[of the Crown] appointed to receive it; and, when such rules have been passed, any cultivator or other person engaged in the cultivation of the poppy and manufacture of opium who shall dispose of any opium otherwise than is allowed by such rules, and any person who shall purchase or receive any such opium in contravention of the said rules, shall be subject to the penalties prescribed in section 19 of this Act; and such penalties may be adjudged by a Magistrate on the information of any officer ²[of the Crown] or of any other person.

Power to prescribe rules for delivery to officers of the Crown.

32. [*Meaning of "Government".*] *Omitted by the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.*

¹These words were substituted for the words "Sub-deputy Opium agent" by s. 2 and Sch. of the Opium (Amendment) Act, 1925 XXVII of 1925).

²These words were substituted for the words "of Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "the Government" *ibid.*

Act XXI of 1857.

(The Howrah Offences Act, 1857.)

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Act XXI of 1857.

(THE HOWRAH OFFENCES ACT, 1857.)¹

(10th July 1857.)

*An Act to make better provision for the order and good government ** * * * of the station of Howrah.*

WHEREAS Acts have been passed for regulating the police and for the conservancy and improvement of the town of Calcutta and of the other presidency-towns; and whereas large portions of ** * * the station of Howrah are not less populous than parts of the said town, and it will conduce to the order and good government of the said ** * station that some of the provisions of the said Acts, with certain necessary modifications, should be extended to the said ** * station; It is enacted as follows:—

Preamble.

1. Whoever is charged with having committed any of the offences mentioned in this Act, within the limits of the said ** * station, as described in the schedule hereunto annexed, may be tried for any such offence by the Magistrate within whose jurisdiction the offence is alleged to have been committed;

Cases under this Act by whom to be tried.

and, on conviction, may be sentenced by such Magistrate to the punishment hereinafter prescribed for the offence.

2. *Clause 1.*—Whoever has in his possession, or conveys in any manner, anything which may be reasonably suspected of being stolen or fraudulently obtained, shall, if he fail to account satisfactorily how he came by the same, be liable to a penalty not exceeding one hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding three months.

Possession of stolen property by one who fails to account satisfactorily for the possession.

Clause 2.—If any person, charged with having or conveying anything stolen or fraudulently obtained,

Power to summon persons declared to have had possession of stolen property within the jurisdiction of the Magistrate.

¹SHORT TITLE.—This short title was given by the Amending Act 1903 (I of 1903).

LOCAL EXTENT.—This Act applies only to Howrah—see the title and preamble.

²The words “of the suburbs of Calcutta and” which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words “the suburbs of the said town of Calcutta and of”, in the preamble, were repealed, *ibid.*

⁴The words “suburbs and” were repealed *ibid.*

⁵The words “suburbs or”, were repealed *ibid.*

(Secs. 3—6.)

shall declare that he received the same from some other person, or that he was employed as a carrier, agent or servant to convey the same for some other person,

the Magistrate may cause every such other person, and also, if necessary, every former or pretended purchaser or other person through whose possession the same shall have passed (provided that such other person shall be alleged to have had possession of the same within the jurisdiction of such Magistrate) to be brought before him and examined, and shall examine witnesses touching the same;

and if it appear to such Magistrate that any person so brought before him had possession of such thing, and had reasonable cause to believe the same to have been stolen or unlawfully obtained, such person shall be liable to a penalty not exceeding one hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding three months.

Penalty if
such
possession
fraudulent.

3. Any person found, between sunset and sunrise, armed with any dangerous or offensive instrument whatsoever, with intent to commit any offence against the person or property of another;

any reputed thief found, between sunset and sunrise, on board any vessel or boat, or lying or loitering in any bazar, street, road, yard, thoroughfare or other place, who shall not give a satisfactory account of himself;

any person found, between sunset and sunrise, having his face covered or otherwise disguised, with intent to commit any such offence as aforesaid;

any person found, between sunset and sunrise, in any dwelling-house or other building whatsoever, without being able satisfactorily to account for his presence therein;

and any person having in his possession, without lawful excuse (the proof of which excuse shall be on such person), any implement of house-breaking,

shall be liable to imprisonment, with or without hard labour, for a term not exceeding three months;

and any such person may be taken into custody by any police-officer without a warrant.

4 to 6. [*Penalty for carrying arms without authority; order for maintenance of wives or children; penalty for harbouring deserters from merchant-vessels.*] *Rep. by the Bengal Municipal Act, 1884 (Ben. Act III of 1884).*

Apprehension
and punishment
of reputed
thieves, etc.

of 1857.]

(Secs. 8—11.)

7. On the complaint of three or more householders **Brothels.** that a house in their immediate neighbourhood is used as a common brothel or lodging-house for prostitutes or disorderly persons of any description, to the annoyance of the respectable inhabitants of the vicinity, the Magistrate may summon the owner or tenant of the house to answer the complaint;

and on being satisfied that the house is so used, and is therefore a source of annoyance and offence to the neighbours, may order the owner or tenant to discontinue such use of it;

and, if he shall fail to comply with such order within five days, may impose upon him a fine to the extent of twenty-five rupees for every day thereafter that the house shall be so used.

8, 9. [*Licenses for retail sale of spirituous or fermented liquors.*] *Rep. by the Bengal Municipal Act, 1884 (Ben. Act III of 1884).*

10. Whoever, being the owner or occupier, or having the use of any house, room or place, keeps or uses the same as a common gaming-house; **Penalty for owning or keeping, or having charge of, a gaming-house, etc.**

and whoever, being the owner or occupier of any house or room, knowingly and wilfully permits the same to be kept or used by any other person as a common gaming-house;

and whoever has the care or management of, or in any manner assists in conducting, the business of any house, room or place so kept or used;

and whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, room or place,

shall be liable to a fine not exceeding two hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding three months.

11. Whoever is found in any such house, room or place playing or gaming with cards, dice, counters, money or other instruments of gaming, or **Penalty for being found playing in a gaming-house.**

is found there present for the purpose of gaming, whether playing for any money, wager, stake or otherwise,

shall be liable to a fine not exceeding one hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding one month;

and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

(Secs. 12—15.)

Magistrate may authorize certain police-officers to enter a gaming-house for the purpose of search and seizure.

12. If the Magistrate, upon information on oath, and after such inquiry as he may think necessary, has reason to believe that any house, room or place is used as a common gaming-house, he may, by his warrant, give authority to any superior officer of police,

to enter, with such assistance as may be found necessary, by night or by day, and by force if necessary, any such house, room or other place,

and to take into custody all persons whom he finds therein whether or not then actually gaming,

and to seize all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming which are found therein,

and to search all parts of the house, room or place which he shall have so entered when he has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he so takes into custody,

and to seize and take possession of all instruments of gaming found upon such search.

On conviction for keeping a gaming-house, instruments of gaming to be destroyed, etc.

13. On conviction of any person for keeping any such common gaming-house or being present therein for the purpose of gaming, all the instruments of gaming found therein shall be destroyed by order of the Magistrate;

who may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof, with all moneys seized therein, to be forfeited; or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

Portion of fine may be paid to informer.

14. The Magistrate may direct any portion, not exceeding one-fourth of any fine which shall be levied under sections 10 and 11 of this Act, or any part of the moneys or proceeds of articles seized and ordered to be forfeited under section 13, to be paid to an informer.

Gambling in the streets.

15. A police-officer may apprehend without warrant any person found gaming with cards, dice, counters, money or other instruments of gaming in any public street, place or thoroughfare;

and such person shall be liable to a fine not exceeding twenty rupees, or to imprisonment, with or without hard labour, for any term not exceeding one month;

of 1857.]

(Secs. 15A—21.)

and such instruments of gaming and money shall be forfeited.

15A. Nothing in sections 10 to 15 shall apply to any game of mere skill, wherever played.

Exemption of games of mere skill.

16, 17. [*Pawnbrokers, etc., to report stolen property; pawnbrokers, etc., when to be deemed receivers of stolen goods.*] *Rep. by the Bengal Municipal Act, 1884 (Ben. Act III of 1884).*

18. Whoever manufactures gunpowder,

Manufacture or possession of gunpowder.

or, without a license from the Magistrate, has in his possession in any house, shop, warehouse or other building, at any one time, a greater quantity of gunpowder than ten pounds,

shall be liable to a fine not exceeding two hundred rupees, and also to forfeit such gunpowder so manufactured or possessed, together with the vessel or receptacle in which it may be contained.

19. The Magistrate may grant to any person a license for the sale or keeping in deposit of any quantity of gunpowder not exceeding fifty pounds on such conditions, and for such term not exceeding one year, as shall be specified in the license;

Licenses by Magistrate for sale and deposit of gunpowder, etc.

and any person who shall be guilty of a breach of any of such conditions shall be liable to a fine not exceeding one hundred rupees, and to forfeit all gunpowder so kept in deposit contrary thereto, and the vessels containing it, and also to forfeit his license.

20. Whoever is found drunk and incapable of taking care of himself or is guilty of any riotous or indecent behaviour in any street or thoroughfare or in any place of public amusement or resort,

Penalty for drunkenness, or riotous or indecent behaviour in public.

and whoever is guilty of violent behaviour in any police-office,

shall be liable to a fine not exceeding twenty rupees, or to imprisonment, with or without hard labour, for a term not exceeding fourteen days.

21. Whoever wilfully and indecently exposes his person, or commits a nuisance by easing himself in or by the side of or near to any public street or thoroughfare or place, shall be liable to a fine not exceeding ten rupees, or, in default of payment thereof, to imprisonment, with or without hard labour, for a term not exceeding fourteen days.

Penalty for committing nuisance in streets.

¹Section 15A was inserted by s. 3 of the Bengal Public Gambling (Amendment) Act, 1913 (Ben. Act IV of 1913).

(Secs. 22—37.)

Beggars.

22. Whoever, in any public road, street, thoroughfare or place, begs or applies for alms, or exposes or exhibits any sores, wounds, bodily ailment or deformity with the object of exciting charity or of obtaining alms,

or whoever seeks for or obtains alms by means of any false statement or pretences,

shall be liable to imprisonment, with or without hard labour, for any term not exceeding one month.

Penalty for the following offences in public streets, etc.—

furiously or negligently driving or riding :
letting loose horses,
ferocious dogs,
etc :

23. Whoever, in any public street, road, thoroughfare or place of public resort, commits any of the following offences, shall be liable to a fine not exceeding twenty rupees :—

(i) Whoever drives or rides any animal or drives any vehicle in a manner so rash or negligent as to indicate a want of due regard for the safety of others :

(ii) Whoever negligently lets loose any horse, or suffers to be at large any ferocious dog without a muzzle, or sets on or urges any dog or other animal to attack, worry or put in fear any person, horse or other animal :

leaving cart, etc., without control :

(iii) Whoever, being in charge of a cart, carriage or horse, leaves it at such a distance as not to have the same under due control :

obstruction to passengers by fastening animals :

(iv) Whoever fastens any animal so as to cause obstruction or danger to passengers :

ill-treating animals :

(v) Whoever cruelly beats, abuses or tortures any animal :

lighting fires and discharging guns, fireworks, etc.

(vi) Whoever sets fire to or burns any straw or other matter, or lights any bonfire, or wantonly discharges any firearm or air-gun, or lets off or throws any fire-work, or sends up any fire-balloon.

24. [*Beating drums, tomtoms, etc.*] *Rep. by the Bengal Municipal Act, 1884 (Ben. Act. III of 1884).*

25 to 32. [*Penalty for depositing dirt on street, etc.; allowing sewerage to flow on street; future obstructions in street; taking up pavement; removal of projections from houses; houses projecting to be set back when taken down; power to trim hedges bordering on roads.*] *Rep. by the Bengal Municipal Act, 1876 (Ben. Act V of 1876).*

33 to 37. [*Houses in dangerous state; sale of materials of such houses; penalty for not removing filth; filthy houses; etc.; filthy cattle-stalls, etc.*] *Rep. by the Bengal Municipal Act, 1884 (Ben. Act III of 1884).*

of 1857.]

(Secs. 38—53.)

38. [*Licensing of public necessities.*] Rep. by the Bengal Municipal Act, 1876 (Ben. Act V of 1876).

39. [*Neglecting private drains, etc.*] Rep. by the Bengal Municipal Act, 1884 (Ben. Act III of 1884).

40 to 45. [*Penalty for fouling water; power to fill up unwholesome tanks; power to drain off stagnant pools; penalty for not lighting deposits of building materials or excavations; enclosing of dangerous places; penalty for establishing slaughter-houses without license.*] Rep. by the Bengal Municipal Act, 1876 (Ben. Act V of 1876).

46. [*Unclean slaughter-houses.*] Rep. by the Bengal Municipal Act, 1884 (Ben. Act III of 1884).

47 to 50. [*Offensive trades; burial and burning grounds; stray dogs.*] Rep. by the Bengal Municipal Act, 1876 (Ben. Act V of 1876).

51. Any police-officer may arrest without a warrant any person committing in his view any offence against this Act, if the name and address of such person be unknown to him.

Police-officer may arrest without warrant on view of offence.

52. Any police-officer may take into custody, without a warrant, any person who is charged with committing an aggravated assault, in every case in which he shall have good reason to believe that such assault has been committed although not in his view, and that, by reason of the recent commission of the offence, a warrant could not have been obtained for the apprehension of the offender.

Police-officer may take into custody, without warrant, persons charged with aggravated assault recently committed.

53. Every person taken into custody without a warrant by a police-officer under this Act shall be taken to the nearest police-office, in order that such person may be detained until he can be brought before the Magistrate, or until he shall enter into recognizances, with or without sureties for his appearance before the Magistrate.

Persons taken into custody by a police-officer, without warrant, may be detained in police-office until brought before Magistrate or bailed.

Any person so detained and not entering into recognizances shall be carried before the Magistrate within twenty-four hours from the time of his being taken into custody.

[Act XX]

(Secs. 54—59.)

Procedure on
information
or complaint
laid before
the Magistrate
of an offence
against this
Act.

54. Upon any information or complaint laid before the Magistrate of any offence committed against this Act, the Magistrate may summon the person charged to appear at a time to be mentioned in the summons, or, if he see sufficient cause for so doing, may issue a warrant for his apprehension.

In all cases of offences punishable with fine only, if after due service of summons the person charged shall not appear in pursuance thereof, the Magistrate, at his discretion, may hear and determine the case in his absence.

55. [*Recovery of costs or expenses.*] *Rep. by the Amending Act, 1903 (I of 1903).*

Jurisdiction.

56. Any Joint Magistrate or Deputy Magistrate duly authorized to exercise the powers of a Magistrate, and any Assistant vested with special powers may, in cases referred to him by the Magistrate, exercise all the powers vested in a Magistrate by this Act.

57. [*Application of fines.*] *Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.*

58. [*Supersession of Act XXI of 1841.*] *Rep. by the Amending Act, 1891 (XII of 1891).*

Interpretation.

59. In the construction of this Act,

3* * * *

“gaming” includes wagering or betting [except wagering or betting upon a horse-race, when such wagering or betting takes place—

(a) on the day on which such race is to be run,^{5*}

¹Words repealed by the Amending Act, 1903 (I of 1903), are omitted.

²The words “Provided also that no appeal shall lie from any order of a Magistrate passed with the sanction of the Lieutenant Governor of Bengal under section 49 of this Act” which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³Clauses as to number and gender, which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁴This definition was substituted for the original definition, by s. 2 of the Bengal Public Gambling (Amendment) Act, 1913 (Ben. Act IV of 1913).

⁵The word “and” was omitted by s. 23 of the Bengal Amusement Tax Act, 1922 (Ben. Act V of 1922).

of 1857.]

(Secs. 59.)

(b) in an enclosure which the Stewards controlling such race have, with the sanction of the ¹Provincial Government, set apart for the purpose], ²[and

(c) (i) with a licensed bookmaker. or

(ii) by means of a totalisator

Ben. Act V
of 1922.

as defined in section 14 of the Bengal Amusements Tax Act, 1922] but does not include a lottery;

³“instruments of gaming” includes any article used as a means or appurtenance of, or for the purpose of carrying on or facilitating, gaming; and

⁴“common gaming-house” means any house, room, tent, or walled enclosure, or space, or vehicle, or any place whatsoever, in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, space, vehicle or place, whether by way of charge for the use of such house, room, tent, enclosure, space, vehicle, place or instruments or otherwise howsoever.

¹The words “Provincial Government” were substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were inserted by s. 23 of the Bengal Amusements Tax Act, 1922 (Ben. Act V of 1922).

³These definitions were substituted for the original definitions by s. 2 of the Bengal Public Gambling (Amendment) Act, 1913, (Ben. Act IV of 1913).

(Schedule.)

1SCHEDULE

Of places included in the ^{2*} * * *Station of Howrah*
_{3*} * *

STATION OF HOWRAH.

Howrah (including)

Panchánantalá.

Juláhápára.

Chándmári (with Tandel Bágán).

North Betrá.

South Betrá.

Ichápur.

Saunpur.

Goládángá.

Rámkrishnapur.

Khurát (with Kasondiyá).

Chakarber.

Santrágáchhi.

Sathgharra.

Gudár Hát (with Kinkar Chatterjea's Hát).

Battore.

Sibpur (with Baji Sibpur, Majerhát, Bharpára,
 Bhattatalá, Sriharinaupára, Bishop's College and
 Company's Botanical Garden).

Padmapukhar.

South Baksará.

North Baksará.

Salkiya (including)

Bándághát (with Haraganj and Bánurjyapára).

Ghoosery (with Bhát Bágán).

Málipáncghará.

Barrackpore.

Bellur.

Naksha.

Chakpára.

Nallua.

Belgáchhiyá (with Paikán Belgáchhiyá).

Báhmangachi.

Chaurásta (with Dharmtalá, Goghátá and Bábu-
 dángá).

Golábári (with Filkhána).

¹This Schedule is referred to in section 1, *ante*.

²The words "Suburbs of Calcutta and " which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words "Suburbs of Calcutta" were repealed, *ibid*.

Act XXXI of 1858.

(The Bengal Alluvial Land Settlement Act, 1858.)¹

(24th August 1858.)

An Act to make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal.

Whereas for the removal of doubts respecting the course proper to be followed in the settlement of land added by alluvial accession to estates paying revenue to Government, it is expedient to lay down certain rules to be observed in the settlement of such land; It is enacted as follows:—

Preamble.

1. When land added by alluvial accession to an estate paying revenue to Government becomes liable to assessment, if it be so agreed on between the Revenue-authorities and the proprietor or proprietors, the revenue assessed upon the alluvial land may be added to the *jama* of the original estate; and in such case a new engagement shall be executed for the payment of the aggregate amount, and that amount shall be substituted in the Collector's rent-roll for the former *jama* of the original estate.

Addition of revenue assessed upon alluvial land to *jama* of original estate.

If the proprietor or proprietors object to such an arrangement, or if the Revenue-authorities are of opinion that a settlement of the alluvial land cannot properly be made for the same term as the existing settlement of the original estate, the alluvial land shall be assessed and settled as a separate estate with a separate *jama*, and shall thenceforward be regarded and treated as in all respects separate from and independent of the original estate, whether the separate settlement be made with the proprietor or proprietors or the land be let in farm in consequence of the refusal of the proprietor or proprietors to accept the terms of settlement.

When separate settlement to be made.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903).

LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal—see the title.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4 (2).

(Secs. 2, 3.)

The separate settlement may be permanent, if the settlement of the original estate is permanent.

Rights of
under-tenants
in alluvial land.

2. Nothing contained in the preceding section shall affect the rights of any under-tenant in any alluvial land under the provisions of clause 1, section 4, Regulation XI, 1825.¹

It shall be the duty of all officers making settlements of such land, whether the land be settled separately or incorporated with the original estate, to ascertain and record all such rights according to the rules prescribed in Regulation VII, 1822²; and to determine whether any and what additional rent shall be payable in respect of the alluvial land by the person or persons entitled to any under-tenure in the original estate.

The provisions of the said Regulation², so far as the same may be applicable, are hereby declared to extend to all settlements made under this Act.

3. [*Separate settlements heretofore made; saving of rights.*] Rep. by the Amending Act, 1903 (1 of 1903).

¹The Bengal Alluvion and Diluvion Regulation, 1825.

²The Bengal Land-revenue Settlement Regulation, 1822.

Act V of 1859.

(The Bengal Ghatwali Lands Act, 1859.)¹

(4th March 1859.)

An Act to empower the holders of ghatwali lands in the district of Birbhum to grant leases extending beyond the period of their own possession.

Whereas it has been held that the *ghatwals* of the district of Birbhum who pay the revenue of their lands directly to Government under the provisions of Regulation XXIX, 1814², of the Bengal Code, have not the power of alienating their lands; Preamble.

And whereas, for the development of the mineral resources of the country in which the said *ghatwali* lands are situate, and for the improvement of the said lands, it is expedient that the power of granting leases for periods not limited by the term of their own possession should in certain cases be extended to the possessors of such lands:—

It is enacted as follows:—

1. *Ghatwals* holding lands in the district of Birbhum under the provisions of the aforesaid Regulation shall have the same power of granting leases for any period which they may deem most conducive to the improvement of their tenures as is allowed by law to the proprietors of other lands: Right of *ghatwals* of Birbhum to grant leases.

Provided that no lease of *ghatwali* lands for any period extending beyond the lifetime or incumbency of the grantor of the lease shall be valid and binding on the successors of the grantor, unless the same shall be granted for the working of mines or for the clearing of jungle, or for the erection of dwelling houses or manufactories, or for tanks, canals and similar works, and shall be approved by the Commissioner of the Division, such approval being certified by an endorsement on the lease under the signature of the Commissioner. Proviso.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903).

LOCAL EXTENT.—This Act was passed only for the district of Birbhum—see the title and s. 1.

²The Bengal Ghatwali Lands Regulation, 1814.

[Act V of 1859.]

(Sec. 2.)

Court of Wards
and Revenue-
authorities
have like power
in certain cases.

2. If any of the said *ghatwali* lands be at any time under the superintendence of the Court of Wards, or otherwise subject to the direct control of the officers of ¹[the Crown], it shall be lawful for the Court of Wards or the Commissioner to grant leases for any such purpose as aforesaid; and every lease so granted shall be valid and binding on all future possessors of the said lands, anything in the existing law to the contrary notwithstanding.

¹These words were substituted for the word "Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

Act X of 1859.

(The Bengal Rent Act, 1859.)

ARRANGEMENT OF SECTIONS.

Preamble.

Section.

1. (*Repealed.*)
2. *Raiyat* entitled to *patta*.
3. *Raiyats* holding land at fixed rates to receive *pattas*.
4. If rent of land be not changed for twenty years.
5. *Raiyats* having right of occupancy, but not holding at fixed rates, to receive *pattas*.
6. Right of occupancy of *raiya*t cultivating or holding land for twelve years.
7. Saving of terms of written contracts.
8. *Pattas* to *raiya*t not having rights of occupancy.
9. Person granting *patta* entitled to counterpart-engagement.
10. Exactions in excess of rent or receipt withheld.
Form of receipt.
11. Landholder not to compel attendance of tenant for adjustment of rent, etc.
Payment of rent how enforced.
12. Damages for extorting payment of rent by duress.
13. Enhancement of rent of *raiya*t holding without, or after expiry, etc., of written engagement.
14. Mode of contesting enhancement of rent.
15. Dependent *talukdar*, etc., holding at fixed rent without change since permanent settlement, not liable to enhancement.
16. Rent of *talukdar*, etc., not changed for twenty years to be *prima facie* evidence of occupancy at that rent since permanent settlement.
17. Rent of *raiya*t having right of occupancy not to be enhanced unless—rate paid by him is below that prevailing in adjacent places; value of land, etc., has increased, independently of *raiya*t; quantity of land held by *raiya*t is greater than he has paid rent for.
18. When *raiya*t may claim abatement of rent.
19. Relinquishment of land by *raiya*t after notice.
20. What to be deemed arrear of rent.
21. Liability of *raiya*t to be ejected for arrear due.
Proviso.
22. Liability of farmer to have lease cancelled for arrear adjudged due.
Proviso.
23. Cognizance of suits under Act.
24. Suits by *zamindars* against agents for money or accounts.
25. Ejectment of cultivators, farmers, etc., by *zamindars*.
Proviso.
26. (*Repealed.*)
27. Registry of transfers of *taluks*, etc.
Proviso.
28. Applications to dispossess grantees of land exempt from revenue
29. Suits by or against *sarbarahkars* or *tahsildars* of estates held *khas*.

Section.

30. Commencement of suits generally.
31. Suits for grant of *pattas*, etc.
32. Suits for arrears of rent.
Proviso.
33. Suits against agents for money, papers or accounts.
Proviso.
34. Mode of instituting suits. Form of plaint or statement of claim.
35. Statement by whom presented.
36. Verification of statement.
Punishment for false verification.
37. (*Repealed.*)
38. Documentary evidence to be produced by plaintiff.
39. Production of document required by plaintiff from defendant.
40. (*Repealed.*)
41. Plaint in suit for ejectment of *raiyyat*, etc., or for recovery of occupancy or possession of land, etc.
42. Statement may be returned or allowed to be amended.
43. Issue of summons; personal attendance of defendant may be required.
44. Day to be specified in summons how fixed. Defendant to produce necessary documents, and bring witnesses willing to attend without process.
45. Summons how served.
46. Endorsement by *nazir* on summons.
47. Execution of process in other district.
48. Cost of serving summons or warrant to be deposited.
49. Warrant of arrest in what cases issued.
50. Procedure after arrest of defendant.
51. Procedure on defendant being brought before Collector.
Form of security-bond.
52. Procedure if warrant cannot be served.
53. Compensation for arrest applied for without reasonable cause.
54. Consequence of neither party appearing on day of trial.
 5. When Collector to pass judgment by default; and when to decree upon admissions.
Proviso.
56. If plaintiff only appear, Collector may proceed *ex-parte*.
57. Defendant appearing at postpond hearing may be heard in answer.
58. Revival, reversal and alteration of decrees *ex parte* or by default.
59. On appearance, parties to be examined by Collector, and may cross-examine each other.
60. Examination of parties, etc.
61. Witnesses to be examined.
62. Documentary evidence to be produced by defendant.
63. After examination, Collector may make decree if no further evidence required.
64. Consequence of inability of agent to answer.
65. If necessary, Collector to record issue, and to fix day for hearing further evidence.
66. Parties to produce witnesses on day of trial, or Collector, on application, to summon witness.

[1859.]

Section.

67. Rules regarding attendance, examination, etc., of witnesses.
68. Consequence of parties not appearing on day fixed for trial of issue.
69. Suits by and against *naibs*, *gumashtas*, etc.
70. Personal attendance when not required.
71. Employment of authorized agents or *mukhtars*.
72. Collector may grant time to adjourn hearing.
73. Collector may cause local inquiry to be made.
74. (*Repealed.*)
75. No interest on deposits.
76. Collector when to fix term for which *patta* is to be granted.
Proviso.
77. In suits for rent, third person claiming to be made party.
Proviso.
78. Suits for ejectment or cancelment of lease.
79. (*Repealed.*)
80. If person required by decree refuse to grant *patta*, Collector may do so.
81. Refusal to execute *kabuliyat* as required by decree.
82. Mode of executing decree for ejectment or re-instatement of *raiyat*.
Punishment for obstructing execution.
83. Execution of decree for cancelment of lease or ejectment or re-instatement of
farmer or tenant.
84. When judgment-debtor may be detained or imprisoned without issue of process
of execution.
85. Liability of surety on failure to deliver judgment-debtor into custody.
86. (*Repealed.*)
87. Application for execution against moveable property.
88. Duration of warrant.
89. Second and successive warrants.
90. After one year execution not to issue without notice.
91. Notice of execution against representative.
92. Execution after three years from date of judgment.
93. Warrant against person.
Limit of imprisonment.
If arrest be for non-delivery of accounts.
94. No second imprisonment under same judgment.
95. Deposit of diet-money.
96. Payment of diet-money in advance during imprisonment.
97. Diet-money to be costs in suit.
98. List of property taken in execution and proclamation of sale.
99. Custody and sale of moveable property taken in execution.
100. Collector may stay sale of moveable property seized, if third party claim
interest therein.
101. Collector to adjudicate such claims.
102. Claimant failing to establish right liable to compensate judgment-creditor.
103. No appeal from order under sections 101, 102.
Proviso.
104. Sale not vitiated by irregularity in publishing or conducting.
Proviso.
105. Sale of transferable tenures in execution of decrees for arrears of rent.

Section.

106. If third party claim to be lawful possessor of tenure, Collector to stay sale and to inquire and adjudicate.
Proviso.
107. Mode of adjudicating claims.
108. Execution of decrees given in favour of sharers in undivided estates or tenures.
109. If execution against immoveable property when money-decree cannot be otherwise satisfied.
110. Execution—
 against house or building;
 against seable under-tenure;
 if it be an estate or a share of an estate.
111. Consequence of objection offered before sale of immoveable property.
112. Produce of land held hypothecated for rent.
Arrears of rent recoverable by distraint under following rules.
Cultivators who have given security exempt from distraint.
Proviso.
113. Distraint when barred.
114. Power of distraint of managers under Court of Wards, etc.
Proviso.
115. Standing crops and crops gathered but not stored liable to distraint.
116. Defaulter to be served with written demand, etc., before or at time of distraint.
117. Distress proportionate to arrear.
List of property served on owner.
118. Standing crops, etc., when attached, to be reaped and stored by cultivator, or if he neglect to do so, by distrainer.
119. Distrainer may apply for aid to Collector in case of resistance.
120. Servants employed to distraint to be furnished with written authority.
121. Distress withdrawn if defaulter tender payment of arrear and expenses prior to sale.
122. Application for sale.
123. Form of application.
Deposit of cost of notice to defaulter.
124. Procedure of *amin* on receipt of application.
125. *Amin* to suspend sale on receipt of Collector's certificate of institution of suit.
126. Suit to contest distrainer's demand before notice of sale.
127. Distress withdrawn on receipt of Collector's certificate of execution of bond to pay amount due.
128. On expiration of period fixed in proclamation of sale if institution of suit to contest demand not certified, sale may proceed.
129. Place and manner of sale of distrained property.
130. If fair price not offered, sale may be postponed, and shall be then completed what ever price offered.
131. Payment of purchase-money.
132. Disposal of proceeds of sale.
133. Officers holding sales prohibited from purchasing.
134. Irregularities to be reported to Collector.
Officer not to sell, if he find that defaulter has not received notice.
135. Recovery of expenses if *amin* proceeds to place of sale and no sale takes place.
136. Proceedings of *amins*, etc., subject to revision and orders of Collectors.
137. Second proclamation of sale.
138. Procedure after institution of suit to contest demand.

of 1859.]

Section.

139. Owner of property distrained for arrears alleged to be due from another may institute suit against distrainer, etc.
Proviso.
140. Procedure if right to distrain be disputed.
141. Persons prevented from suing in time to save property from sale may sue for damages.
142. Also persons aggrieved by illegal act of distrainer.
143. Unlawful distraint.
144. Time for commencing suits for damages.
145. Resistance of distraint.
146. Service of process.
147. Resistance of process.
148. Place of holding Court.
Proviso.
149. } (*Repealed.*)
150. }
151. Control of Collectors and Deputy Collectors.
No appeal from orders of Collectors and Deputy Collectors in certain cases.
152. Time for presenting appeals from orders.
153. When appeal allowed from judgment of Collector for money below one hundred rupees.
154. Re-hearing in suits not open to appeal.
155. Appeal from decision of Deputy Collector.
156. Petition of appeal.
157. Procedure in appeal.
158. Re-admission of appeal.
159. Judgment in appeal.
160. In what suits appeal to lie to *Zila* Judge,
to *Sadar* Court.
161. Presentation and hearing of appeals.
162. (*Repealed.*)
163. No jurisdiction in Collector as to lands beyond district.
164. Deputy Collector when not to exercise judicial powers.
165. Powers to be exercised by Assistants to Collectors.
166. Saving of rights of proprietors as to tenures under Reg.VIII, 1819.
167. (*Repealed.*)
168. "Civil Jail."
"Nazir."

Schedule.

Forms A to G.

Act X of 1859.

(The Bengal Rent Act, 1859.)

(29th April 1859.)

An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.

Whereas it is expedient to re-enact with certain Preamble. modifications the provisions of the existing law relative to the rights of *raiya*ts with respect to the delivery of *pattas* and the occupancy of land, to the prevention of illegal exaction and extortion in connection with demands of rent, and to other questions connected with the same; to extend the jurisdiction of Collectors, and to prescribe rules for the trial of such questions, as well as of suits for the recovery of arrears of rent, and of suits arising out of the distraint of property for such arrears; and to amend the law relating to distraint.

It is enacted as follows:—

1. [*Laws repealed and modified.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

2. Every *raiya*t is entitled to receive, from *Raiyat* entitled to *patta*. the person to whom the rent of the land held or cultivated by him is payable, a *patta* containing the following particulars:—

the quantity of land; and, where fields have been numbered in a Government survey, the number of each field;

the amount of annual rent;

the instalments in which the same is to be paid;

and any special conditions of the lease;

if the rent is payable in kind, the proportion of produce to be delivered and the time and manner of delivery.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903).

LOCAL EXTENT.—This Act applied originally to the whole of Bengal as constituted in 1859 (see the title and section 3), but it has been repealed by the Bengal Tenancy Act, 1885 (VIII of 1885), s. 2 (1), everywhere except "the town of Calcutta, the Division of Orissa and the Scheduled Districts."

The extension of the repeal to Scheduled Districts depends upon the terms of notifications extending the Act of 1885 to such districts. Under the terms of the notifications extending the Act of 1885 to the Jalpaiguri district, the repeal has taken effect in that district.

The application of this Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), s. 4(2).

The only portion of the present Province of Bengal in which Act X of 1859 appears to be in force is the Darjeeling district.

(Secs. 3—8.)

Raiyats holding land at fixed rates to receive *pattas*.

If rent of land be not changed for twenty years.

Raiyats having right of occupancy, but not holding at fixed rate, to receive *pattas*.

Right of occupancy of *raiyyat* cultivating or holding land for twelve years.

Saving of terms of written contracts.

Pattas to *raiyyats* not having rights of occupancy.

3. *Raiyats* who, in the provinces of Bengal, [Bihar, Orissa,]¹ hold lands at fixed rates of rent which have not been changed from the time of the permanent settlement, are entitled to receive *pattas* at those rates.

4. Whenever, in any suit under this Act, it shall be proved that the rent at which land is held by a *raiyyat* in the said provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

5. *Raiyats* having rights of occupancy, but not holding at fixed rates as described in the two preceding sections, are entitled to receive *pattas* at fair and equitable rates.

In case of dispute, the rate previously paid by the *raiyyat* shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act.

6. Every *raiyyat* who has cultivated or held land for a period of twelve years has a right of occupancy in the land so cultivated or held by him, whether it be held under *patta* or not, so long as he pays the rent payable on account of the same; but this rule does not apply to *khamar*, *nijot* or *sir* land belonging to the proprietor of the estate or tenure and let by him on lease for a term or year by year, nor (as respects the actual cultivator) to lands sublet for a term or year by year by a *raiyyat* having a right of occupancy.

The holding of the father or other person from whom a *raiyyat* inherits shall be deemed to be the holding of the *raiyyat* within the meaning of this section.

7. Nothing contained in the last preceding section shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a *raiyyat* when it contains any express stipulation contrary thereto.

8. *Raiyats* not having rights of occupancy are entitled to *pattas* only at such rates as may be agreed on between them and the persons to whom the rent is payable.

¹The words "and Benares," which Act, 1903 (1 of 1903), are omitted.

repealed by the Amending

[1859.]

(Secs. 9—13.)

9. Every person who grants a *patta* is entitled to receive from the person to whom the *patta* is granted a *kabuliyat* or counterpart-engagement in conformity with the terms of the *patta*.

Persons granting *patta* entitled to counterpart-engagement.

The tender to any *raiyyat* of a *patta* such as the *raiyyat* is entitled to receive shall be held to entitle the person to whom the rent is payable to receive a *kabuliyat* from such *raiyyat*.

10. Every under-tenant or *raiyyat* from whom any sum is exacted in excess of the rent specified in his *patta*, or payable under the provisions of this Act, whether as *abwab* or under any other pretext, and every under-tenant, *raiyyat* or cultivator from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the person receiving such rent damages not exceeding double the amount so exacted or paid.

Exactions in excess of rent or receipt withheld.

Receipts for rent shall specify the year or years on account of which the rent is acknowledged to have been paid; and any refusal to make such specification shall be held to be a withholding of a receipt.

Form of receipt.

11. The power heretofore vested in *zamindars* and other landholders of compelling the attendance of their tenants for the adjustment of their rents or for any other purpose is withdrawn, and all such persons are prohibited from adopting any means of compulsion for enforcing payment of the rents due to them other than are authorized by the provisions of this Act.

Landholder not to compel attendance of tenant for adjustment of rent, etc. Payment of rent how enforced.

12. If payment of rent, whether the same be legally due or not, is extorted from any under-tenant or *raiyyat* by illegal confinement or other duress, such under-tenant or *raiyyat* shall be entitled to recover such damages, not exceeding in any case the sum of two hundred rupees, as may be deemed a reasonable compensation for the injury done him by such extortion.

Damages for extorting payment of rent by duress.

An award of compensation under this section shall not bar or affect any penalty or punishment to which the person practising such extortion may be subject by law.

13. No under-tenant or *raiyyat* who holds or cultivates land without a written engagement, or under a written engagement not specifying the period of such engagement, or whose engagement has expired, or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which the land held or cultivated by him is situate, and has not

Enhancement of rent of *raiyyat* holding without or after expiry, etc., of written engagement.

(Secs. 14—16.)

been renewed, shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall have been served on such under-tenant or *raiyat*, in or before the month of *Chaitra*¹ specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement of rent is claimed.

Such notice shall be served by order of the Collector on the application * * * of the person to whom the rent is payable, and shall, if practicable, be served personally on the under-tenant or *raiyat*.

If for any reason the notice cannot be served personally upon the under-tenant or *raiyat*, it shall be affixed at his usual place of residence, or, if he have no such place of residence in the district in which the land is situate, the mode of service of such notice shall be by affixing it at the *mal-cutcherry* of such land or other conspicuous place thereon, or at the village *chauri* or *chaupal*, or at some other conspicuous place in the village in which the land is situate.

Mode of
contesting
enhancement
of rent.

14. Any under-tenant or *raiyat* on whom such notice as aforesaid has been served may contest his liability to pay the enhanced rent demanded of him, either by complain of excessive demand of rent as hereinafter provided, or in answer to any suit preferred against him for recovery of arrears of the enhanced rent.

Dependent
talukdar, etc.,
holding at
fixed rent
without
change since
permanent
settlement,
not liable to
enhancement.

15. No dependent *talukdar* or other person possessing a permanent transferable interest in land, intermediate between the proprietor of an estate and the *raiya*s, who, in the provinces of Bengal, [*Bihar, Orissa*]² * * * holds his *taluk* or tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the permanent settlement, shall be liable to any enhancement of such rent, anything in section 51, Regulation VIII, 1793⁴, or in any other law to the contrary notwithstanding.

Rent of
talukdar, etc.,
not changed
for twenty
years to be
prima facie
evidence of
occupancy at
that rent since
permanent
settlement.

16. Whenever, in any suit under this Act, it shall be proved that the rent at which a *taluk* or other tenure is held in the said provinces has not been changed for

¹The month of *Chaitra* corresponds with the last part of March and the first part of April.

²The words "which may be on plain paper," which were repealed by the Court-fees Act, 1870 (VII of 1870), are omitted.

³The words "and Benares," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁴The Bengal Decennial Settlement Regulation, 1793.

[1859.]

(Secs. 17—19.)

a period of twenty years before the commencement of the suit, it shall be presumed that such *taluk* or tenure has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or it be proved that such rent was fixed at some later period.

17. No *raiyat* having a right of occupancy shall be liable to an enhancement of the rent previously paid by him except on some one of the following grounds, namely:—

that the rate of rent paid by such *raiyat* is below the prevailing rate payable by the same class of *raiya*s for land of a similar description and with similar advantages in the places adjacent;

that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the *raiyat*;

that the quantity of land held by the *raiyat* has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

Rent of *raiyat* having right of occupancy not to be enhanced unless—rate paid by him is below that prevailing in adjacent places; value of land, etc., has increased, independently of *raiyat*; quantity of land held by *raiyat* is greater than he has paid rent for.

18. Every *raiyat* having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise, or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the *raiyat*, or if the quantity of land held by the *raiyat* has been proved by measurement to be less than the quantity for which rent has been previously paid by him.

When *raiyat* may claim abatement of rent.

19. Any *raiyat* who desires to relinquish the land held or cultivated by him shall be at liberty to do so provided he gives notice of his intention in writing to the person entitled to the rent of the land, or his authorised agent in or before the month of *Chaitra*¹ of the year preceding that in which the relinquishment is to have effect.

Relinquishment of land by *raiyat* after notice.

If he fail to give such notice, and the land is not let to any other person, he shall continue liable for the rent of the land.

If the person entitled to the rent of the land, or his agent refuse to receive any such notice and to sign a

¹The month of *Chaitra* corresponds with the last part of March and the first part of April.

(Secs 20—23.)

receipt for

make an application

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Put an asterisk before the word “twelve” in section 20, and insert the following footnote after footnote 3, namely:—

*In the application of the Act to the district of Darjeeling, in section 20 for the word “twelve” substitute the words “six and a quarter”.

(Substituted by Bengal Regulation IV of 1945, section 3.)

[No. 42, dated the 12th January, 1948.]

Liability
of *raiya*t to
be ejected
for arrear due.

21. When an arrear of rent remains due from any *raiya*t at the end of the Bengal year², or at the end of the month of *Jeth*³ of the [*Fasli* or] *Wilaiyati* year, as the case may be, such *raiya*t shall be liable to be ejected from the land in respect of which the arrear is due:

Proviso.

Provided that no *raiya*t having a right of occupancy or holding under a *patta* the term of which has not expired shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

Liability of
farmer to have
lease cancelled
for arrear
adjudged
due.

22. When an arrear of rent shall be adjudged to be due from any farmer or other leaseholder not having a permanent or transferable interest in the land, the lease of such leaseholder shall be liable to be cancelled and the leaseholder to be ejected:

Proviso.

Provided that no such lease shall be cancelled nor the leaseholder ejected otherwise than in execution of a decree or order under the provisions of this Act.

Cognizance
of suits under
Act.

23. (1) All suits for the delivery of *pattas* or *kabuliya*t or for the determination of the rates of rent at which such *pattas* or *kabuliya*t are to be delivered;

(2) all suits for damages on account of the illegal exaction of rent or of any unauthorised cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress;

(3) all complaints of excessive demand of rent, and all claims to abatement of rent;

¹The words “on plain paper,” which were repealed by the Court-fees Act, 1876 (VII of 1870), are omitted.

²The month of *Chaitra* corresponds with the last part of March and the first part of April.

³The month of *Jeth* corresponds with the last part of May and the first part of June.

of 1859.]

(Secs. 24, 25).

(4) all suits for arrears of rent due on account of land either *khiraji* or *lakhiraj*, or on account of any rights of pasturage, forest-rights, fisheries or the like;

(5) all suits to eject any *raiyat* or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a *raiyat* may be liable to ejectment or a lease may be liable to be cancelled;

(6) all suits to recover the occupancy or possession of any land, farm or tenure, from which a *raiyat*, farmer or tenant has been illegally ejected by the person entitled to receive rent for the same;

(7) all suits arising out of the exercise of the power of distraint conferred on *zamindars* and others by sections 112 and 114 of this Act, or out of any acts done under colour of the exercise of the said power as hereinafter particularly provided,

shall be cognizable by the Collectors of land-revenue and shall be instituted and tried under the provisions of this Act and, except in the way of appeal as provided in this Act, shall not be cognizable in any other Court or by any other officer or in any other manner.

24. Suits by *zamindars* and others in receipt of the rent of land, against any agents employed by them in the management of land or collection of rents, or the sureties of such agents, for money received or accounts kept by such agents, in the course of such employment, or for papers in their possession, shall be cognizable by the Collectors, and shall be instituted and tried under the provisions of this Act, and shall not be recognisable in any other Court except in the way of appeal as provided in this Act.

Suits by *zamindars* against agents for money or accounts.

25. If any *zamindar* or other person in receipt of the rent of land requires assistance to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, he shall make application to the Collector, and the Collector shall proceed thereupon to inquire into the case and pass orders in the manner provided for suits under this Act;

Ejectment of cultivators, farmers, etc., by *zamindars*.

Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received, if the lease be of the kind denominated *thika*, *zaripeshgi*, or the like, in which an advance has been

Proviso.

(Secs. 26—28.)

made by the leaseholder, and the proprietor's right of re-entry at the end of the term is contingent on the repayment of such advance either in money or by the usufruct of the land. In all such cases the parties must proceed by suit in the Civil Court.

26. [Measurement of lands.] Rep. by the Bengal Rent Act, 1862 (Ben. Act. VI of 1862).

Registry of
transfers of
taluks, etc.

27. All dependent *talukdars* and other persons possessing a permanent transferable interest in land intermediate between the *zamindar* and the cultivator are required to register in the *sarishta* of the *zamindar* or superior tenant to whom the rents of their *taluks* or tenures are payable, all transfers of such *taluk* or tenures or portions of them, by sale, gift or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance.

And every *zamindar* or superior tenant is required to admit to registry and otherwise give effect to all such transfers, when made in good faith, and all such successions and divisions.

If any *zamindar* or superior tenant refuse to admit to registry or otherwise give effect to any such transfer or succession, the transferee or successor may make application to the Collector, and the Collector shall thereupon proceed to inquire into the case in the manner provided for suits under this Act, and, if no sufficient grounds are shown for the refusal, shall pass an order enjoying the *zamindar* or superior tenant to admit to registry and otherwise give effect to such transfer or succession:

Proviso.

Provided that no *zamindar* or superior tenant shall be required to admit to registry or give effect to any division or distribution of the rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing of the *zamindar* or superior tenant.

Applications
to dispossess
grantees of
land exempt
from revenue.

28. So much of section 10, Regulation XIX, 1793¹, * * * and section 24, Regulation XII, 1805², as authorizes and requires proprietors and farmers of estates and dependent *taluks*, in cases in which grants for holding land exempt from the payment of revenue

¹The Bengal Revenue-free Lands (Non *Badshahi* [Grants] Regulation, 1793.

²The words and figures "section 10, Regulation 41, 1795, sectin 6 Regulation 31, 1803, section 21, Regulation 8, 1805," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

³The Cuttack Land-revenue Regulation, 1805.

of 1859.]

(Secs. 29—32.)

have been made subsequent to the dates specified in the said sections, of their own authority to collect the rents of such land and to dispossess the grantees of the proprietary right in the land and to re-annex it to the estate or *taluk* in which it may be situate, is repealed; and any proprietor or farmer who may desire to assess any such land or to dispossess any such grantee shall make application to the Collector, and such application shall be dealt with as a suit under the provisions of this Act.

Every such suit shall be instituted within the period of twelve years from the time when the title of the person claiming the right to assess the land or dispossess the grantee, or of some person claiming under him, first accrued.

29. All suits which under the provisions of this Act may be brought by or against *zamindars* or other persons in the receipt of the rent of land may be brought by or against *sarbarakars* or *tahsildars* of estates held under *khas* management, whether such estates are the property of ²[the Crown] or of individuals.

Suits by or against *sarbarakars* or *tahsildars* of estates held *khas*.

30. Except as otherwise herein provided, all suits instituted under this Act shall be commenced within the period of one year from the date of the accruing of the cause of action.

Commencement of suits generally;

31. Suits for the delivery of *pattas* or *kabuliyats*, and for the determination of the rates of rent at which such *pattas* or *kabuliyats* are to be delivered, may be instituted at any time during the tenancy.

suits for grant of *pattas*, etc;

32. Suits for the recovery of arrears of rent shall be instituted within three years from the last day of

suits for arrears of rent.

¹The words "If such period has already elapsed, or will elapse within two years from the date of the passing of this Act, such suit may be brought at any time within two years from such date" which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

²These words were substituted for the word "Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The remainder of s. 29, which was repealed by the Amending Act, 1903 (1 of 1903), is omitted.

(Secs. 33, 34.)

the Bengal year¹, or from the last day of the month of *Jeth*² of the [*Fasli* or] *Wilayati* year, in which the arrear claimed, shall have become due.

3* * * *

Proviso.

Provided that, if the suit be for the recovery of rent at a higher rate than was payable in the previous year, such rent having been enhanced after issue of notice under section 13, and the enhancement not having been confirmed by any competent Court, the suit shall be instituted within three months from the end of the Bengal year¹, or of the month of *Jeth*² of the [*Fasli* or] *Wilayati* year, on account of which such enhanced rent is claimed.

Suits against
agents for
money, papers
or accounts.

33. Suits for the recovery of money in the hands of an agent or for the delivery of accounts or papers by an agent may be brought at any time during the agency or within one year after the determination of the agency of such agent⁴ * * *.

Proviso.

Provided that, if the person having the right to sue shall by means of fraud have been kept from the knowledge of the receipt of any such money by the agent or if any fraudulent account shall have been rendered by the agent, the suit may be brought within one year from the time when the fraud shall have been first known to such person; but no such suit shall in any case⁵ * * * be brought at any time exceeding three years from the termination of the agency.

Mode of instituting suits.
Form of plaint
or statement
of claim.

34. Suits under this Act shall be instituted by presenting to the Collector a plaint or statement of claim which shall contain the name, description and place of abode of the plaintiff, the name, description and place of abode of the defendant, so far as they can be ascertained, the substance of the claim and the date of the cause of action.

¹The Bengal year ends with the month of *Chaitra*, which corresponds with the last part of March and the first part of April.

The month of *Jeth* corresponds with the last part of May and the first part of June.

²The words "For arrears of rent due at the passing of this Act, suit shall be brought within three years after the passing of this Act, or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire" which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁴The words "or, in the case of claims now existing, within one year after the passing of this Act, or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire" were repealed, *ibid*.

⁵The words "(except the case of claims now existing as afore-said)" were repealed, *ibid*.

of 1859.]

(Secs. 35—41.)

35. The statement of claim shall be presented by the plaintiff or by an authorized agent of the plaintiff who has personal knowledge of the facts of the case, or by an agent who shall be accompanied by a person who has such knowledge. Statement by whom presented.

36. The statement of claim shall be subscribed and verified at the foot by the plaintiff or his agent in the manner following or to the like effect:— Verification of statement.

I, A. B., do declare that the above statement is true to the best of my knowledge and belief.

If the statement shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence. Punishment for false verification.

37. [*Statement of claim to be written on stamped paper.*] Rep. by Act XXXVI of 1860.

38. If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Collector at the time of presenting his statement of claim. Documentary evidence to be produced by plaintiff.

Unless such document be delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

39. If the plaintiff require the production of any document in the possession or power of the defendant, he may at the time of presenting his statement of claim deliver to the Collector a description of the document in order that the defendant may be required to produce the same. Production of document required by plaintiff from defendant.

40. [*Form of plaint in suits for arrears of rent.*] Rep. by the Bengal Rent Act, 1862 (Ben. Act VI of 1862).

41. If the suit be for the ejectment of a *raiyat*, farmer or tenant from any land, farm or tenure, or for the recovery of the occupancy or possession of any land, farm or tenure, the statement shall describe (as circumstances may require), the extent, situation and designation of the same; and, if necessary for the identification of the land, shall set forth the boundaries of such land. Plaint in suit for ejectment of *raiyat*, etc., or for recovery of occupancy or possession of land, etc.

(Secs. 42—47.)

Statement may be returned or allowed to be amended.

42. If the statement of claim do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Collector may return the statement to the plaintiff, or at his discretion allow it to be amended.

Issue of summons; personal attendance of defendant may be required.

43. If the statement of claim be in proper form, the Collector, except as otherwise hereinafter specially provided, shall direct the issue of a summons to the defendant, and if the plaintiff, require the personal attendance of the defendant, and satisfy the Collector that such personal attendance is necessary, or the Collector of his own accord require such personal attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons; otherwise the summons shall order the defendant to appear personally or by an agent duly authorized on his behalf, who has personal knowledge of the subject, or who shall be accompanied by a person who has such personal knowledge.

Day to be specified in summons how fixed. Defendant to produce necessary documents, and bring witnesses willing to attend without process.

44. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be or be supposed to be at the time from the place where the Court is held, and the summons shall order the defendant to produce any document which he may have in his possession, of which the plaintiff demands inspection, or upon which the defendant may intend to rely in support of his defence.

It shall also enjoin him to bring with him his witnesses if they are willing to attend without issue of process, and shall be in the form (A) contained in the schedule to this Act or to the like effect.

Summons how served.

45. The summons shall be served by delivering a copy of the summons to the defendant personally when practicable, or, if the summons cannot be served on the defendant personally, by affixing a copy of it to some conspicuous part of his usual place of abode, and also affixing a copy of the same in the Collector's office.

Endorsement by nazir on summons.

46. If the summons be served personally, the *nazir* shall endorse on the summons the fact of such service. If personal service be not effected, the *nazir* shall endorse on the summons the reason of not serving it personally, and how it has been served.

Execution of process in other district.

47. If the usual place of abode of the defendant be in another district the summons, together with the cost of the service thereof, shall be sent by the public

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(Secs. 48, 49.)

post to the Collector of such district, who shall issue the summons, and return the same after service, with the prescribed endorsement, to the officer by whom it was transmitted to him.

48. The amount of the cost of serving the summons, or, if a warrant be issued as provided in the next succeeding section, of serving the warrant, shall in all cases be deposited in Court upon the same day or the day next following that on which the plaint or statement of claim is presented to the Collector.

Cost of serving summons or warrant to be deposited.

If the said amount be not so deposited (except in cases in which the Collector may allow the issue of summons free of cost under the discretion reserved to him in section 146), the case shall not be brought on the file of suits; but in such case the plaintiff may present another plaint at any time within the period allowed by the rules for the limitation of actions.

49. If in any suit against an under-tenant or *raiyat* for the recovery of an arrear of rent, or against an agent for the recovery of any money, papers or accounts, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, he shall present with his statement of claim an application for the issue of such warrant.

Warrant of arrest in what cases issued.

When such application is presented, the Collector shall examine the plaintiff or his agent on his oath or affirmation or otherwise according to the law for the time being in force in relation to the examination of witnesses, and inspect the documents adduced by him in support of his claim, and if there be *prima facie* grounds for believing the claim to be well-founded, and that if, a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Collector may issue a warrant for the arrest of the defendant.

The Collector shall fix a reasonable time for the return of the warrant, which shall be in the form (B) contained in the schedule to this Act or to the like effect, and the officer entrusted with the service of the warrant shall at the time of arresting the defendant deliver to him a notice addressed to the defendant (which shall be in the form (C) in the schedule or to the like effect) containing the particulars of the claim, and requiring the defendant, if he contest the claim, to bring with him any document upon which he may intend to rely in support of his defence.

(Secs. 50—53.)

But no such warrant shall be issued in a suit for arrears of rent due in respect of a dependent *taluk* or other transferable tenure, which, as hereinafter provided, is liable to sale in execution of any decree which may be passed in the case.

Procedure
after arrest
of defendant.

50. If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Collector, and the Collector shall commit him to custody unless he deposit in Court such sum as may be specified in the notice.

Procedure on
defendant
being brought
before
Collector.

51. When a defendant is brought before the Collector under warrant, the Collector shall with all convenient speed proceed to try the case in the manner hereinafter provided; and, if the suit cannot be at once adjudicated, the Collector may, if he think fit, require the defendant to give security for his appearance whenever the same may be required at any time whilst the suit is depending or until execution of the final decree which may be passed thereon, and may commit the defendant to the civil jail, to be there detained until he shall furnish such security or deposit such sum as the Collector shall order.

Form of
security-
bond.

The security-bond shall be in the form (D) contained in the schedule to this Act or to the like effect.

Procedure if
warrant
cannot be
served.

52. If the defendant cannot be arrested under the warrant, the Collector, on the application of the plaintiff, shall either postpone the case for such period as he may think proper in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation to be affixed in his own office and at the residence of the defendant fixing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice at the residence of the defendant.

If the defendant shall appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding section.

Compensation
for arrest
applied for
without
reasonable
cause.

53. If it shall appear to the Collector that the arrest of the defendant was applied for without reasonable cause, the Collector may in his decree award to the defendant such sum not exceeding one hundred rupees as he may deem a reasonable compensation for any injury or loss which the defendant may have sustained by reason of such arrest or of his detention in jail during the pendency of the suit.

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(Secs. 54—58.)

54. If on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case shall be struck off with liberty to the plaintiff to bring a fresh suit unless precluded by the rules for the limitation of actions.

Consequence of neither party appearing on day of trial.

55. If on any such day the defendant only appear, the Collector shall pass judgment against the plaintiff by default, unless the defendant admit the cause of action, in which case the Collector shall proceed to give judgment for the plaintiff upon such admission, without costs:

When Collector to pass judgment by default; and when to decree upon admission. Proviso.

Provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

56. If on any such day the plaintiff only appear, the Collector, upon proof that the summons or proclamation has been duly served according to the provisions of this Act, shall proceed to examine the plaintiff or his agents, and, after considering the allegations of the plaintiff, and any documentary or oral evidence adduced by him, may either dismiss the case or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may pass judgment *ex parte* against the defendant.

If plaintiff only appear, Collector may proceed *ex parte*.

57. If the defendant shall appear on any subsequent day to which the hearing of the suit may be postponed under the last preceding section, the Collector may upon such conditions, if any, as to costs or otherwise as he may think proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

Defendant appearing at postponed hearing may be heard in answer.

58. No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance.

Revival, reversal and alteration of decrees *ex parte* or by default.

But in all such cases, if the party against whom judgment has been given shall appear, either in person or by agent, if a plaintiff within fifteen days from the date of the Collector's order, and if a defendant within fifteen days after any process for enforcing the judgment has been executed or at any earlier period, and shall show good and sufficient cause for his previous non-appearance and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon

(Secs. 59—63.)

such terms and conditions as to costs or otherwise as he may think proper, revive the suit and alter or rescind the decree, according to the justice of the case.

But no decree shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

On appearance, parties to be examined by Collector, and may cross-examine each other,

59. When both parties appear in person or by agent on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned for sufficient reason to be recorded by the Collector, the Collector shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other.

If either of the parties be not bound to attend personally, any agent by whom he shall appear, or any person who shall accompany such agent, shall be examined and cross-examined in like manner as the party himself would have been if he had attended personally.

At the time of examination the defendant, if he think fit, may file a written statement of his defence.

Examination of parties, etc.

60. The examination of the parties or their agents or such other persons as aforesaid shall be upon oath or affirmation or otherwise according to the law for the time being in force relative to the examination of witnesses.

The substance of the examination shall be reduced to writing in the vernacular language of the Collector and filed with the record.

Witnesses to be examined,

61. If either of the parties shall bring forward a witness on such day, the Collector may take the evidence of such witness.

Documentary evidence to be produced by defendant.

62. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit; and unless such document be so delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

After examination, Collector may make decree if no further evidence required.

63. If after the examination required by section 59 and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced a decree can be properly made without further evidence, the Collector shall make his decree accordingly.

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(Secs. 64—68).

64. If, on such examination as aforesaid, the agent of either party be unable to answer any material question relating to the case which the Collector is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Collector may postpone the hearing of the case to a future day, and direct that the party whose agent may have been unable to answer as aforesaid shall attend in person on such day; and, if the party so directed to attend shall fail to appear in person on the day appointed, the Collector may pass judgment as in case of default or make such other order as he may deem proper in the circumstances of the case.

Consequence of inability of agent to answer.

65. If on such examination as aforesaid it appear that the parties are at issue on any question upon which it is necessary to hear further evidence, the Collector shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit; and the trial shall take place on that day unless there be sufficient reason for adjourning it, which reason shall be recorded by the Collector.

If necessary, Collector to record issue, and to fix day for hearing further evidence.

66. The parties shall bring forward their witnesses on the day of trial, and, if either party require assistance to procure the attendance of a witness on such day either to give evidence or to produce a document, he shall apply to the Collector in sufficient time before the day fixed for the trial, to enable the witness to be summoned to attend on that day; and the Collector shall issue a summons requiring such witness to attend.

Parties to produce witnesses on day of trial, or Collector, on application, to summon witness.

67. The provisions of the Regulations and Acts and all other rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witness and the production of documents, and for the examination, remuneration and punishment of witnesses, whether parties to the case or not, in cases before the Civil Courts of the Presidency of Bengal, shall, except so far as the same may be inconsistent with the provisions of this Act, apply to and be of equal force and effect in suits under this Act.

Rules regarding attendance, examination, etc., of witnesses.

68. If on the day fixed for the trial of any issue neither of the parties appear, the case shall be struck off under the conditions provided in section 54.

Consequence of parties not appearing on day fixed for trial of issue.

If on any such day one only of the parties appear, the issue may be tried and determined in the absence of the other party upon such proof as may be then before the Court.

(Secs. 69—73.)

Suits by and
against *naibs*,
gumashias,
etc.

69. When suits under this Act are instituted or defended by *naibs*, *gumashias* or other persons employed in the collection of rent or management of land in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act by which the personal appearance or attendance of parties to a suit is or may be required shall be applicable to such *naibs*, *gumashias* or other persons; and anything which by this Act is required or permitted to be done by a party in person may be done by any such person as aforesaid.

Processes served on any such person shall be as effectual for all purposes in relation to the suit as if the same had been served on the landholder in person, and all the provisions of this Act relative to the service of processes on a party to the suit shall be applicable to the service of processes on such person.

Personal
attendance
when not
required.

70. A plaintiff or defendant shall not be required to attend in person if of the female sex and of a rank or class which according to the custom and manners of the country would render it improper for her to appear in public.

Employment
of authorized
agents or
mukhtars.

71. Any party to a suit may employ an authorized agent or *mukhtar* to conduct the case on his behalf, but the appointment of such agent or *mukhtar* shall not excuse the personal attendance of the plaintiff or defendant in cases where his personal attendance is required by the summons or any order of the Court. * * * *

Collector may
grant time to
adjourn
hearing.

72. The Collector may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit, and may also from time to time, in order to the production of further proof or for other sufficient reason to be recorded by the Collector, adjourn the hearing or further hearing of any case in such manner as to him may seem fit.

Collector may
cause local
inquiry to be
made.

73. The Collector may at any stage of a case cause a local inquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of ²[the Crown] with the consent

¹The words "and no fee for any agent shall be charged as part of the costs of suit in any case under this Act" which were repealed by the Pleaders, Mukhtars and Revenue Agents Act, 1865 (XX of 1865), are omitted.

²These words were substituted for the word "Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1859.]

(Secs. 74—77.)

of the authority to whom such officer is subordinate, or may himself proceed to the spot and make such local inquiry in person.

The provisions of the law for the time being in force relative to local inquiries by *amins* or commissioners under orders of the Civil Courts shall apply to any local inquiry made by any officer under this section, and so far as they are applicable to inquiries made by the Collector in person.

In the latter case the Collector, after completing the inquiry, shall record on the proceedings such observations as appear to him appropriate, and the observations so recorded shall be received as evidence in the suit.

74. [*Payment of money into Court in satisfaction of demand.*] Rep. by the Bengal Rent Act, 1862 (Ben. Act VI of 1862).

75. No interest shall be allowed to a plaintiff on any sum paid by the defendant into Court from the date of such payment, whether such sum be in full of the plaintiff's claim or fall short thereof.

No interest on deposits.

76. If on the trial of a suit for the delivery of a *patta* instituted by a *raiyat* having a right of occupancy the parties do not agree as to the term for which the *patta* is to be granted, the Collector shall fix such term as under the circumstances of the case he may think just and proper:

Collector when to fix term for which *patta* is to be granted.

Provided that the term shall not in any case be longer than ten years, and in estates not permanently settled shall not extend beyond the period for which the proprietor of the estate has engaged with [the Crown]:

Proviso.

Provided also that, if the defendant be a farmer or other person having only a temporary interest in the land, the term of the *patta* shall not extend beyond the period of the continuance of such interest.

For cultivators not having a right of occupancy, the term of *patta* shall be exclusively in the discretion of the person entitled to the rent of the land.

77. When, in any suit between a landholder and a *raiyat* or under-tenant under this Act, the right to receive the rent of the land or tenure cultivated or held

In suits for rent, third person claiming to be made party.

¹These words were substituted for the word "Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Secs. 78—81.)

by the *raiyat* or under-tenant is disputed, and such right is claimed by or on behalf of a third person on the ground that such third person or a person through whom he claims has actually and in good faith received and enjoyed such rent before and up to the time of the commencement of the suit, such third person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such third person shall be inquired into and the suit shall be decided according to the result of such inquiry:

Proviso.

Provided always that the decision of the Collector shall not affect the right of either party, who may have a legal title to the rent of such land or tenure, to establish his title by suit in the Civil Court if instituted within one year from the date of the decision.

Suits for
ejectment
or cancelment
of lease.

78. Any person desiring to eject a *raiyat* or to cancel a lease on account of non-payment of arrears of rent may sue for such ejectment or cancelment and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejectment or cancelment.

In all cases of suits for the ejectment of a *raiyat* or the cancelment of a lease, the decree shall specify the amount of the arrear, and, if such amount together with interest and costs of suit be paid into Court within fifteen days from the date of the decree, execution shall be stayed.

79. [*Judgment how to be pronounced.*] Rep. by the Bengal Rent Act, 1862 (*Ben. Act VI of 1862*).

If person
required by
decree refuse
to grant *patta*,
Collector may
do so.

80. When a decree is given for the delivery of a *patta*, if the person required by the decree to grant such *patta* refuse or delay to grant the same, the Collector may grant a *patta* in conformity with the terms of the decree under his own hand and seal, and such *patta* shall be of the same force and effect as if granted by the person aforesaid.

Refusal to
execute
kabuliyat as
required by
decree.

81. When a decree is given for the delivery of a *kabuliyat*, if the person required by the decree to execute such *kabuliyat* shall refuse to execute the same, the decree shall be evidence of the amount of rent claimable from such person, and a copy of the decree under the hand and seal of the Collector shall be of the same force and effect as a *kabuliyat* executed by the said person.

(Secs. 82—86.)

82. If the decree be for the ejectment of any *raiyat* from land occupied by him, or for the re-instatement of any *raiyat* in the occupancy of land from which he has been ejected, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree to such possession or occupancy.

Mode of executing decree for ejectment or re-instatement of *raiyat*.

If any opposition is made to the execution of the order for giving such possession or occupancy by the party against whom the order is made, the Magistrate, on the application of the Collector, shall give effect to the same.

Punishment for obstructing execution.

83. If the decree be for the cancelment of any lease or the ejectment of any farmer or other person (not being an actual cultivator), or for the reinstatement of any farmer or other such person in the possession of a farm or tenure from which he has been ejected, the decree shall be executed by proclaiming the substance of the decree to the cultivators or other occupants by beat of drum or in such other manner as may be customary, and affixing the same in some conspicuous place within or adjacent to the farm or tenure.

Execution of decree for cancelment of lease or ejectment or re-instatement of farmer or tenant.

84. If the decree be for arrears of rent or for money, papers or accounts, and the defendant have been committed to jail or appear pursuant to the conditions of any security-bond given under section 51, the Collector may order that he be detained in or committed to the civil jail, unless he immediately pay into Court the amount of the decree with costs, or otherwise comply with the terms of the decree.

When judgment-debtor may be detained or imprisoned without issue of process of execution.

85. If the judgment-debtor have given security for his appearance and be not present when judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety.

Liability of surety on failure to deliver judgment-debtor into custody.

If the decree be for the delivery of papers or accounts, and the defendant be not present when judgment is pronounced and the surety shall fail to deliver him into custody when required so to do, execution may be taken out against the surety for the sum due under the bond in the same manner as if a decree for that sum had been passed against the surety.

86. [*Issue of process of execution.*] Rep. by the Bengal Rent Act, 1862 (Ben. Act VI of 1862).

(Secs. 87—93.)

Application
for
execution
against
moveable
property.

87. Any moveable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor, but if the creditor is unable to furnish such list, he may apply for a general attachment of the debtor's effects to the amount of the judgment and costs.

In either case the property to be seized shall be pointed out to the officer entrusted with the execution of the process by the creditor or his agent.

Duration of
warrant.

88. Every warrant of execution shall bear date on the day on which it is signed by the Collector and shall continue in force for such period as the Collector may direct, not being more than sixty days calculated from such date.

Second and
successive
warrants.

89. Second and successive warrants of execution may be issued by order of the Collector on the application of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

After one
year execution
not to issue
without
notice.

90. Process of execution shall not be issued upon any judgment without previous notice to the party against whom execution is applied for, if, when application for the issue of the process is made, a period of more than one year shall have elapsed from the date of the judgment or from the date of the last previous application for execution.

Notice of
execution
against
representative.

91. Execution on a judgment shall not issue against the heir or other representative of a deceased party without notice to such heir or other representative to appear and be heard.

Execution
after three
years from
date of
judgment.

92. No process of execution of any description whatsoever shall be issued on a judgment under this Act after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred rupees, in which case the period within which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the Civil Courts.

Warrant
against
person.

93. If a warrant issue for taking in execution the body of any person, the officer charged with the execution of the warrant shall bring him with all convenient speed before the Collector.

If such person shall not then deposit in Court the full amount specified in the warrant or make such arrangement for the payment of the same as shall be satisfactory to the judgment-creditor, or satisfy the Collector

of 1859.]

(Secs. 94—97).

that he has no present means of paying the debt, the Collector shall send him to the civil jail, there to remain for such time as shall be directed by a warrant addressed to the keeper of the jail, unless he shall in the meantime pay the full amount for the payment of which he is liable under the decree:

Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed three calendar months when the amount decreed exclusive of costs does not exceed fifty rupees, or six calendar months when such amount does not exceed five hundred rupees, or two years in any other case. Limit of imprisonment.

If the decree against any person arrested under a warrant be for the delivery of papers or accounts and the papers or accounts shall not be delivered by him when he is brought before the Collector, such person may be committed to the civil jail, there to remain for such time not exceeding six calendar months as the Collector shall direct, unless he shall in the meantime deliver the papers or accounts according to the terms of the decree. If arrest be for non-delivery of accounts.

94. Any person once discharged from jail shall not be imprisoned a second time under the same judgment. No second imprisonment under same judgment.

If the amount due under the decree do not exceed one hundred rupees, the Collector may declare such discharged person absolved from further liability under that decree.

In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to such person from attachment in execution of the same.

95. Any person applying for a warrant of arrest under section 49 or suing out process of execution against the body of any person, shall deposit in Court, at the time of issue of the warrant, diet-money for one month of thirty days at such rate as the Collector may direct, not exceeding two annas *per diem*, unless the Collector for any special reason direct that deposit be made at a higher rate, which shall not exceed four annas *per diem*. Deposit of diet-money.

96. Payment of diet-money at the same rate shall be made previously to the commencement of each succeeding month of the imprisonment, in failure of which the party confined shall be discharged. Payment of diet-money in advance during imprisonment.

97. All-diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit, and any diet-money not so spent shall be returned to the person who deposited the same. Diet-money to be costs in suit.

(Secs. 98—102).

List of
property
taken in
execution and
proclamation
of sale.

98. In executing a writ of execution against the movable property of a debtor liable under this Act, the officer charged with the execution of the writ shall prepare a list of the property pointed out by the judgment-creditor, and shall publish a proclamation specifying the day upon which the sale is intended to be held, together with a copy of the said list, at the intended place of sale and at the residence of the debtor.

A copy of the said proclamation and list shall be transmitted to the Collector and shall be affixed in his office.

Custody and
sale of
moveable
property
taken in
execution.

99. No sale of any moveable property taken in execution shall be made until after the end of ten days next following the day on which such property may have been so taken.

Until such sale the property shall be deposited in some fit place or it may remain in custody of some fit person approved by the officer executing the writ.

The provisions of sections 129 to 133, so far as the same are applicable, shall be applied to sales under this section.

Collector may
stay sale of
moveable
property
seized, if third
party claim
interest
therein.

100. If before the day fixed for the sale a third party appear before the Collector and claim a right or interest in any of the moveable property taken in execution, the Collector shall examine such party or his agent on oath or affirmation or otherwise, according to the law for the time being in force relative to the examination of witnesses, and if he see sufficient reason for so doing may stay the sale of such property.

Collector to
adjudicate
such claims.

101. The Collector shall adjudicate upon such claim and make such order between the claimant and the plaintiff and defendant in the original suit as shall seem fit.

In trying such claim the Collector shall be guided by the rules contained in this Act so far as they may be applicable.

Claimant
failing to
establish right
liable to
compensate
judgment-
creditor.

102. If the claimant shall fail to establish his right to the property taken in execution, the Collector at the time of disposing of the case may award to the judgment-creditor against such claimant as part of the costs such sum as he may consider sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

of 1859.]

(Secs. 103—106.)

103. No appeal shall lie from any order passed by the Collector under the two last preceding sections. But the party against whom the same may be given shall be at liberty to bring a suit in the Civil Court to establish his right at any time within one year from the date of the order:

No appeal from order under sections 101, 102.

Provided that, if the order be for the sale of the property, the suit shall not be for the recovery of the property, but shall be for damages against the judgment-creditor by whom the property was brought to sale.

Proviso.

104. No irregularity in publishing or conducting a sale of moveable property under an execution shall vitiate such sale, but this rule shall not be held to deprive any person who may sustain damage by reason of such irregularity from recovering such damage by action in the Civil Court:

Sale not vitiated by irregularity in publishing or conducting.

Provided such action be brought within one year from the date of sale.

Proviso.

105. If the decree be for an arrear of rent due in respect of an under-tenure, which by the title-deeds or the custom of the country is transferable by sale, the judgment-creditor may make application for the sale of the tenure and the tenure may thereupon be brought to sale in execution of the decree according to the rules for the sale of under-tenures for the recovery of arrears of rent due in respect thereof contained in any law for the time being in force.

Sale of transferable tenures in execution of decrees for arrears of rent.

But no such application shall be received when a warrant of execution has been previously issued against the person or moveable property of the judgment-debtor so long as such warrant remains in force.

If after sale of an under-tenure any portion of the amount decreed remains due, process may be applied for against any other property, moveable or immoveable, belonging to the debtor, and any such immoveable property may be brought to sale in the manner provided in section 110 of this Act.

106. If before the day fixed for the sale of any such under-tenure as aforesaid in execution of a decree for arrears of rent due in respect of such under-tenure, a third party appear before the Collector and allege that such third party and not the person against whom the decree has been obtained is the proprietor of such under-tenure and was in lawful possession of the same at the time when such decree was obtained, the Collector shall examine such party in the manner provided in section 100 for the examination of third parties, and if he sees sufficient reason for so doing, and such party shall

If third party claim to be lawful possessor of tenure, Collector to stay sale and to inquire and adjudicate.

(Secs. 107—110.)

deposit in Court the amount of the decree or give sufficient security for the same, the Collector shall stay the sale and proceed to inquire into and adjudicate upon the claim :

Proviso.

Provided that no transfer of an under-tenure which by the provisions of this Act or any other law for the time being in force is required to be registered in the *sharishta* of the *zamindar* or superior tenant shall be recognised unless it have been so registered, or unless sufficient cause for non-registration be shown to the satisfaction of the Collector.

Mode of adjudicating claims.

107. In trying such claim the Collector shall be guided by the rules contained in this Act, so far as the same may be applicable, and the judgment passed by the Collector on such claim shall not be subject to appeal, but the party against whom it is given may bring a suit in the Civil Court to establish his right at any time within one year from the date of the judgment.

Execution of decrees given in favour of sharers in undivided estates or tenures.

108. If a decree is given in favour of a sharer in a joint undivided estate, dependent *taluk* or other similar tenure for money due to him on account of his share of the rent of an under-tenure situate in such undivided estate or *taluk* or tenure, application for the sale of such under-tenure shall not be received unless execution shall have been first taken out against any moveable property, which the judgment-debtor may possess within the district in which the suit was instituted and the sale of such property, if any, shall have proved insufficient to satisfy the judgment.

In such case such under-tenure, if of the nature described in section 105, may be brought to sale in execution of the decree in the same manner as any other immoveable property may be sold in execution of a decree for money under the provisions of the two next following sections.

If execution against immoveable property when money-decree cannot be otherwise satisfied.

109. In the execution of any decree for the payment of money under this Act not being money due as arrears of rent of a saleable under-tenure, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor within the district in which the suit was instituted, the judgment-creditor may apply for execution against any immoveable property belonging to such debtor.

Execution—against house or building ;

110. If the immoveable property against which execution is applied for be a house or other building, process shall be issued in the same manner as for the attachment and sale of moveable property, and the provisions of section 98 and 99 shall be applicable to the execution of such process.

of 1859.]

(Secs. 111—113.)

If the property be a saleable under-tenure, it shall be sold under the provisions of the law for the time being in force applicable to the sale of such under-tenures for demands other than those of arrears of rent due in respect thereof.

against
saleable
under-
tenure ;

If the property be an estate or a share of an estate, it shall be sold under the rules in force for the sale of estate for the recovery of demands recoverable by the same process as arrears of land-revenue.

if it be an
estate or a
share of an
estate.

111. If, before the day fixed for the sale of any immoveable property as aforesaid, objection shall be offered to the sale on the ground of such property not belonging to the judgment-debtor, and consequently not being liable to be sold in execution of a decree against him, the Collector shall examine the party making the objection in the manner prescribed in section 100 for the examination of third parties, and, if satisfied that there is sufficient ground for so doing, shall stay the sale and proceed to inquire into and adjudicate upon the objection, in the same manner, and subject to the same right of suit by the party against whom judgment may be given, as is provided in section 107.

Consequence of
objection
offered before
sale of
immoveable
property.

112. The produce of the land is held to be hypothecated for the rent payable in respect thereof; and, when an arrear of rent as defined in section 20 of this Act is due from any cultivator of land, the *zamindar*, *lakhirajdar*, farmer, dependent *talukdar*, under-farmer or other person entitled to receive rent immediately from such cultivator, instead of bringing suit for the arrear as hereinbefore provided, may recover the same by distraint and sale of the produce of the land on account of which the arrear is due under the following rules :

Produce of
land held
hypothecated
for rent.
Arrears of rent
recoverable by
distraint
under
following
rules.

Provided always that, when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to distraint :

Cultivators
who have
given security
exempt from
distraint.

Provided also that no sharer in a joint estate, dependent *taluk* or other tenure in which a division of land has not been made amongst the sharers shall exercise the power of distraint, otherwise than through a manager authorised to collect the rents of the whole estate, *taluk* or tenure on behalf of all the sharers in the same.

Proviso.

113. Distraint shall not be made for any arrear which has been due for a longer period than one year, nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless a written engagement for the payment of such excess has been executed by the cultivator.

Distraint
when barred.

(Secs. 114—117.)

**Power of
distrain of
managers
under Court
of Wards, etc.**

114. The power of distrain vested by section 112 in *zamindars* and other persons entitled to receive rent from cultivators of land may be exercised by managers under the Court of Wards, *sarbarahkars* and *tahsildars* of estates held under *khas* management, and other persons lawfully entrusted with the charge of landed property; and also by the *naibs*, *gumashtas* and other agents employed by any such persons as aforesaid in the collection of rent if expressly authorized by power-of-attorney in that behalf:

Proviso.

Provided that, if any illegal act is committed by any such *naib*, *gumashta* or other agent under colour of the exercise of the said power, the person employing such agent shall be liable, as well as the agent, for any damages accruing by reason of such act.

**Standing
crops and
crops gathered
but not stored
liable to
distrain.**

115. Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered, and deposited in any threshing-floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with the powers of distrain under the provisions of this Act.

But no such crops or products other than the produce of the land in respect of which an arrear of rent is due or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to distrain under this Act.

**Defaulter to
be served
with written
demand, etc.,
before or at
time of dis-
traint.**

116. Before or at the time when distrain is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made.

The demand and account shall, if practicable, be served personally on the defaulter, or, if he abscond or conceal himself so that they cannot be so served, shall be affixed at his usual place of residence.

**Distress pro-
portionate to
arrear.
List of pro-
perty served
on owner.**

117. Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid of value proportionate to the amount of the arrear with costs of the distress, and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or if he be absent affix it at his usual place of residence.

of 1859.]

(Secs. 118—122.)

118. Standing crops and other ungathered products may, notwithstanding the distraint, be reaped and gathered by the cultivator, and may be stored in such granaries or other places as are commonly used by him for the purpose.

Standing crops, etc., when attached, to be reaped and stored by cultivator, or, if he neglect to do so, by distrainer.

If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood.

In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose.

Crops or products which from their nature do not admit of being stored may be sold before they are cut or gathered, under the rules hereinafter provided; but in such case the distraint shall be made at least twenty days before the time when the crops or products or any part of the same would be fit for cutting or gathering.

119. If a distrainer shall be opposed or shall apprehend resistance, and shall desire to obtain the assistance of a public officer, he may apply to the Collector, and the Collector may, if he thinks necessary, depute an officer to support the distrainer in making the distraint.

Distrainer may apply for aid to Collector in case of resistance.

120. When any person empowered to distrain property under section 112 or section 114 shall employ a servant or other person to make the distress, he shall give to such servant or person a written authority¹ * * * for the same, and the distress shall be made in the name and on the responsibility of the person giving such authority.

Servants employed to distrain to be furnished with written authority.

121. If at any time after property has been distrained, and prior to the day fixed for its being put up to sale as hereinafter provided the owner of the property shall tender payment of the arrear demanded of him and of the expenses of the distress, the distrainer shall receive the same and shall forthwith withdraw the distress.

Distress withdrawn if defaulter tender payment of arrear and expenses prior to sale.

122. Within five days from the time of the storing of any distrained crops or products, or if the crops or products do not, from their nature, admit of being stored, within five days from the time of making the distress, the distrainer shall apply for sale of the same

Application for sale.

¹The words " (which may be on plain paper)," which were repealed by the Court-fees Act, 1870 (VII of 1870), are omitted.

(Secs. 123—125.)

to the Civil Court *amin* or other officer authorized to sell property in satisfaction of decrees of the Civil Court within the circle in which the distrained property is situate, or to such other public officer as the ¹[Provincial Government] shall appoint for the purpose.

Form of
application.

123. The application shall be in writing and shall contain an inventory or description of the property distrained, the name of the defaulter and his place of residence, the amount due and the date of the distress, and the place in which the distrained property is deposited.

Deposit of
cost of notice
to defaulter.

Together with the application, the distrainer shall deliver to the Civil Court *amin* or other officer the amount necessary for the service of a notice upon the defaulter as hereinafter provided.

Procedure of
amin on re-
ceipt of
application.

124. Immediately on receipt of the application the Civil Court *amin* or other officer shall transmit a copy of it to the Collector; and shall serve a notice [which shall be in the form (G) contained in the schedule to this Act or to the like effect] on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector within the period of fifteen days from the receipt of the notice.

He shall at the same time send to the Collector, for the purpose of being put up in his office, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice to be put up by him in the place where the distrained property is deposited.

The proclamation shall contain a description of the property, the demand for which it is to be sold and the place where the sale is to be held.

Amin to sus-
pend sale on
receipt of
Collector's
certificate of
institution of
suit.

125. If a suit shall be instituted before the Collector in pursuance of the aforesaid notice, the Collector shall transmit to the Civil Court *amin* or other officer, or if so requested shall deliver to the owner of the distrained property a certificate of the institution of such suit; and on such certificate being received by or presented to the *amin* or other officer, he shall suspend proceedings in regard to the sale of the distrained property.

¹These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1859.]

(Secs. 126—129.)

126. A person whose property has been distrained in the manner hereinbefore provided may institute a suit to contest the demand of the distrainer immediately after the distraint of his property, and before the issue of notice of sale.

Suit to contest distrainer's demand before notice of sale.

When such suit is instituted, the Collector shall proceed in the manner prescribed in the last preceding section.

If thereafter application for the sale of the property is made to the Civil Court *amin* or other officer, he shall transmit a copy of the application to the Collector and suspend further proceedings pending the decision of the case.

127. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid or at any subsequent period, execute a bond with security binding himself to pay whatever sum may be adjudged to be due from him with interest and costs of suit, and when such bond is executed the Collector shall give to the owner of the property a certificate to that effect, or if so requested shall serve the distrainer with notice of the same and, upon such certificate being presented to the distrainer by the owner of the property or served on him by order of the Collector, the property shall be released from distraint.

Distress withdrawn on receipt of Collector's certificate of execution of bond to pay amount due.

128. On the expiration of the period fixed in the proclamation of sale, if the institution of a suit to contest the demand of the distrainer has not been certified to the Civil Court *amin* or other officer in the manner hereinbefore provided, he shall, unless the said demand, with such costs of the distress as shall be allowed by him, be discharged in full, proceed to sell the property or such part of it as may be necessary in the manner following.

On expiration of period fixed in proclamation of sale if institution of suit to contest demand not certified, sale may proceed.

129. The sale shall be held at the place where the distrained property is deposited, or at the nearest *ganj*, *bazar*, *hath* or other place of public resort, if the Civil Court *amin* or other officer should be of opinion that it is likely to sell there to better advantage.

Place and manner of sale of distrained property.

The property shall be sold by public auction in one or more lots as the officer holding the sale may think advisable; and, if the demand with the costs of distress and sale be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

(Secs. 130—134.)

If fair price not offered, sale may be postponed, and shall be then completed whatever price offered.

Payment of purchase-money.

Disposal of proceeds of sale.

Officers holding sales prohibited from purchasing.

Irregularities to be reported to Collector.

Officer not to sell, if he find that defaulter has not received notice.

130. If on the property being put up for sale a fair price in the estimation of the officer holding the sale be not offered for it, and the owner of the property or some person authorized to act on his behalf apply to have the sale postponed until the next day, or the next market-day if a market be held at the place of sale, the sale shall be postponed until such day and shall be then completed at whatever price may be offered for the property.

131. The price of every lot shall be paid for in ready money at the time of sale or as soon after as the officer holding the sale shall think necessary; and in default of such payment the property shall be put again and sold.

When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

132. From the proceeds of the sale of distrained property the officer holding the sale shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall transmit the amount to the Collector in order that it may be credited to ¹[the Provincial Government].

He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress and of the issue of the notice and proclamation of sale prescribed in section 124 to such amount as, after examination of the statement of expenses furnished by the distrainer, he shall think proper to allow.

The remainder shall be applied to the discharge of the arrear for which the distraint was made, with interest thereon up to the day of sale, and if there be any overplus, it shall be delivered to the person whose property shall have been sold.

133. Officers holding sales of property under this Act and all persons employed by or subordinate to such officers are prohibited from purchasing either directly or indirectly any property sold by such officers.

134. Civil Court *amins* and other officers as aforesaid are required to bring to the notice of Collectors any material irregularities committed by distrainers under colour of this Act; and if in any case, on proceeding to hold a sale of property, the Civil Court *amin* or other officer shall find that the owner of the property has not received due notice of the distress and intended sale, he

¹These words were substituted for the word "Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1859.]

(Secs. 135—137.)

shall postpone the sale and report the case to the Collector, and the Collector shall direct the issue of another notice and proclamation of sale under section 124 or pass such other order as he may think proper.

135. When a Civil Court *amin* or other officer has proceeded to any place for the purpose of holding a sale and no sale takes place either for the reason stated in the last preceding section or because the demand of the distrainer has been previously satisfied, no intimation of such satisfaction having been given by the distrainer to the Civil Court *amin* or other officer, the charge of one anna in the rupee on account of expenses shall be leviable and shall be calculated on the estimated value of the distrained property.

Recovery of expenses if *amin* proceeds to place of sale and no sale takes place.

If the demand of the distrainer be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property and may be recovered by the sale of such portion thereof as may be necessary.

In every other case it shall be paid by the distrainer and may be recovered by attachment and sale of the property of the distrainer under the warrant of the Collector:

Provided always that in no case shall a larger amount than ten rupees be recoverable under this section.

136. All proceedings under this Act of the Civil Court *amins* and other officers as aforesaid shall be subject to the revision and orders of the Collectors and the Collectors with the sanction of the ¹[Board] of Revenue, may require the submission of such periodical reports and statements of business performed by the Civil Court *amins* and other officers as may be thought necessary.

Proceedings of *amins*, etc., subject to revision and orders of Collectors.

137. When a suit has been instituted to contest the demand of a distrainer and the property has not been released on security, if the demand or any portion of it shall be adjudged to be due, the Collector shall issue an order to the Civil Court *amin* or other officer authorizing the sale of the property, and on the application of the distrainer, which shall be made within five days from the receipt of such order by the Civil Court *amin* or other officer, such *amin* or officer shall publish a second proclamation in the manner prescribed in section 124, fixing another day for the sale of the distrained property, which shall not be less than five nor more than

Second proclamation of sale.

¹This word was substituted for the word "Boards" by the Amending Act, 1903 (1 of 1903).

(Secs. 138, 139.)

ten days from the date of the proclamation; and, unless the amount adjudged to be due with the cost of distress be paid intermediately, shall proceed to sell the property in the manner hereinbefore provided.

Procedure
after
institution of
suit to contest
demand.

138. In all suits instituted to contest the demand of a distrainer, the distrainer shall be required to prove the arrear in the same manner as if he had himself brought suit for the amount under the foregoing provisions of this Act.

If the demand or any part thereof is found to be due, the Collector shall make a decree for the amount in favour of the distrainer, and the amount may be recovered by sale of the property as provided in the last preceding section if the distress has not been withdrawn, and, if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter, or, if the property have been released on security, by execution of the decree against the person and property of the defaulter and of his surety.

If, on the other hand, the distraint is adjudged to be vexatious or groundless, the Collector, besides directing the release of the distrained property, may award such damages in favour of the plaintiff as the circumstances of the case shall seem to require.

Owner of
property
distrained for
arrears
alleged to be
due from
another may
institute suit
against
distrainer, etc.

139. If any person shall claim, as his own, property which has been distrained for arrears of rent alleged to be due from any other person, such person may institute a suit against the distrainer and such other person to try the right to the property in the same manner and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand.

When any such suit is instituted, the property may be released upon security being given for the value of the same.

If the claim is dismissed, the Collector shall make an order for the sale of the property or the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

If the claim is upheld, the Collector shall decree the release of the distrained property with costs, and such damages (if any) as the circumstances of the case may seem to require:

of 1859.]

(Secs. 140—142.)

Provided always that no claim to any produce of land liable to distraint under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, whether such claim be in respect of a previous sale, mortgage or otherwise, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any Civil Court prevail against such prior claim. Proviso.

140. If, in any case in which property has been distrained for an arrear of rent and a suit has been instituted to contest the demand, the right to distrain for such arrear is claimed by or on behalf of any person other than the distrainer on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such other person before and up to the time of the commencement of the suit shall be inquired into, and the suit shall be decided according to the result of such inquiry: Procedure if right to distrain be disputed.

Provided always that the decision of the Collector shall not affect the right of either party who may have a legal title to the rent of the land to establish his title by suit in the Civil Court if instituted within one year from the date of the decision.

141. If any person whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing suit to contest the demand, or to try the right to the property, as the case may be, within the period allowed by sections 124 and 139, and his property is in consequence brought to sale, he may nevertheless institute a suit under this Act to recover damages for the illegal distress and sale of his property. Persons prevented from suing in time to save property from sale may sue for damages.

142. If any person empowered to distrain property, or employed for the purpose under a written authority by a person so empowered, shall distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act, or if any distrained property shall be lost, damaged or destroyed by reason of the distrainer not having taken proper precaution for the due keeping and preservation thereof, or if the distraint shall not be immediately withdrawn when it is required to be withdrawn by any provision of this Act, the owner of the Also persons aggrieved by illegal act of distrainer.

(Secs. 143—146).

property may institute a suit under this Act to recover damages for any injury which he may have thereby sustained.

Unlawful
distrain.

143. If any person not empowered to distrain property under sections 112 and 114 of this Act, nor employed for the purpose under a written authority by a person so empowered, shall distrain or sell or cause to be sold any property under colour of this Act, the owner of the property may institute a suit under this Act to recover damages from such person for any injury which he may have sustained from the distrain or sale.

The said person shall be held to have committed criminal trespass, and shall be subject to the penalties for that offence in addition to any damages which may be awarded against him in such suit:

Time for
commencing
suits for
damages.

144. Provided always that any suit which may be instituted under any of the last three sections shall be commenced within three months from the date of the occurrence of the cause of action.

Resistance of
distrain.

145. If any person shall resist a distrain of property duly made under this Act, or shall forcibly or clandestinely remove any distrained property, the Collector, upon complaint being made within fifteen days from the date of such resistance or removal, shall cause the person accused to be arrested, and, if the offence be proved and the offender be the owner of the property, shall order him to be imprisoned in the civil jail for six months, or until the whole arrear due to the distrainer with all expenses and costs shall sooner be paid or levied by distress and sale of the property of the offender under warrant of the Collector.

If the person convicted of the offence be any other than the owner of the property, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred rupees, or, in default of payment thereof, to imprisonment for a period not exceeding two months.

Service of
process.

146. Every process issued by a Collector under this Act shall be under the seal and signature of the Collector, and shall be served or executed by the *nazir* or by such other officer as the Collector may direct at the cost of the party at whose instance it issued.

The amount of such cost, and, in the case of summons to a witness, any sum required for the travelling expenses of such witness, shall be deposited in Court before the process is issued:

of 1859.]

(Secs. 147—151.)

Provided that, if in any case the Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

147. Any resistance or opposition to the lawful process of a Collector under this Act may be punished by the Collector according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of civil justice. Resistance of process.

When in any such case the offender is not present in Court, the Collector may summon him to answer to the charge, and, if after due service of the summons he fail to attend, may issue a warrant for his apprehension.

Orders passed by Collectors under this section shall not be deemed to be orders relating to the trial of suits or to the execution of decrees within the meaning of section 151.

148. It shall be competent to the Collector to hold a Court for hearing and determining suits under this Act in any place within the limits of his district or local jurisdiction : Place of holding Court.

Provided that every hearing and decision shall be in open Court, and that the parties to the suit or their authorized agents shall have had due notice to attend at such place. Proviso.

149. [*Agents or mukhtars.*] *Rep. by the Pleaders, Mukhtars and Revenue Agents Act, 1865 (XX of 1865).*

150. [*Powers of Deputy Collectors.*] *Rep. by the Bengal Rent Act, 1862 (Ben. Act VI of 1862).*

151. In the performance of their duties under this Act, the Collectors and Deputy Collectors shall be subject to the general direction and control of the Commissioners and the ¹[Board] of Revenue; and the Deputy Collectors shall be subject to the direction and control of the Collectors to whom they are subordinate. Control of Collectors and Deputy Collectors.

All orders passed by a Collector under this Act, not being judgments in suits or orders passed in the course of suits and relating to the trial thereof or orders passed after decree and relating to the execution thereof, shall be appealable to the Commissioner; and all such orders passed by a Deputy Collector shall be appealable to the No appeal from orders of Collectors and Deputy Collectors in certain cases.

¹This word was substituted for the word "Boards" by the Amending Act, 1903 (1 of 1903).

(Secs. 152—156).

Collector; but no judgment of a Collector or Deputy Collector in any suit, and no order of a Collector or Deputy Collector passed in any suit and relating to the trial thereof, or after decree and relating to the execution thereof, shall be open to revision or appeal otherwise than as expressly provided in this Act.

Time for
presenting
appeals from
orders.

152. Every appeal against the order of Collector shall be presented to the Commissioner within thirty days, and every appeal against the order of a Deputy Collector shall be presented to the Collector within fifteen days, from the date of the order.

Orders passed in appeal by a Commissioner or a Collector shall not be open to any further appeal, but the Board of Revenue or the Commissioner may call for any case and pass such orders thereon as they may think proper.

When appeal
allowed from
judgment
of Collector
for money
below one
hundred
rupees.

153. In suits under clauses (2), (4) and (7) of section 23 and under section 24 of this Act, tried and decided by a Collector, if the amount sued for or the value of the property claimed does not exceed one hundred rupees, the judgment of the Collector shall be final and not open to revision or appeal except as hereinafter provided, unless in any such suit a question of right to enhance or otherwise vary the rent of a *raiyat* or tenant, or any question relating to a title to land, or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in sections 160 and 161 of this Act.

Re-hearing in
suits not open
to appeal.

154. In suits in which the judgment of the Collector is final as provided in the last preceding section, the Collector may, upon the application of either party, if preferred within thirty days from the date of the decision, order the re-hearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of or could not produce, at the time of trial.

Appeal from
decision of
Deputy
Collector.

155. When any such suit as aforesaid, in which if tried and decided by a Collector the judgment of the Collector would be final, is tried and decided by a Deputy Collector, an appeal from the judgment of the Deputy Collector shall lie to the Collector.

Petition of
appeal.

156. The petition of appeal shall be written * * * and shall be presented to the Collector within fifteen

¹So much of s. 156 as relates to the stamp to be borne by a petition of appeal having been repealed by the Court-fees Act, 1870 (VII of 1870), the words "on stamp paper of eight annas value" have here been omitted.

of 1859.]

(Secs. 157—161.)

days from the date of the decree, provided that such time as may be requisite for procuring a copy of the decree appealed against shall not be reckoned as part of the fifteen days.

157. The Collector shall fix a day for hearing the appeal, and shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons. Procedure in appeal.

If, on the day fixed for hearing the appeal or any other day to which the hearing may be adjourned, the appellant shall not appear in person or by an agent, the appeal shall be dismissed for default.

If the appellant shall appear and the respondent shall not appear in person or by an agent the appeal shall be heard *ex parte*.

158. If an appeal be dismissed for default of prosecution, the appellant may within fifteen days from the date of the dismissal, apply to the Collector for the re-admission of the appeal, and, if it shall be proved to the satisfaction of the Collector that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector may re-admit the appeal. Re-admission of appeal.

159. After hearing the appeal the Collector shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits, and the judgment of the Collector shall be final. Judgment in appeal.

160. In all suits other than those, in which, when tried and decided by a Collector, the judgment of the Collector is declared to be final, or when tried and decided by a Deputy Collector an appeal is allowed to the Collector, an appeal from the judgment of the Collector or Deputy Collector shall lie to the *Zila* Judge; unless the amount or value in dispute exceed five thousand rupees, in which case the appeal shall lie to the *Sadar* Court. In what suits appeal to lie to *Zila* Judge;
to *sadar* Court.

161. The petition of appeal shall be written * * * and the rules in force in regard to the time within which appeals from the decisions of such Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the *Zila* Judge or *Sadar* Court under this Act. Presentation and hearing of appeals.

¹So much of s. 161 as relates to the stamp to be borne by a petition of appeal having been repealed by the Court-fees Act, 1870 (VII of 1870), the words "on the stamp paper prescribed for appeals from the subordinate Civil Courts with reference to the amount or value of the property involved in the appeal" have here been omitted.

(Secs. 162—168.)

162. [*Revenue-offices in which suits to be preferred.*] *Rep. by the Bengal Rent Act, 1862 (Ben. Act VI of 1862).*

No jurisdiction in Collector as to lands beyond district.

163. * * * no Collector shall exercise any jurisdiction under this Act in respect to any lands situate beyond the limits of the district to which he is appointed, by reason of such lands forming part of an estate, the revenue of which is paid into the treasury of the said district.

Deputy Collector when not to exercise judicial powers.

164. No Deputy Collector appointed under Regulation IX, 1833¹, of the Bengal Code shall exercise any judicial powers or other jurisdiction under this Act if entrusted with any police functions.

Powers to be exercised by Assistants to Collectors.

165. Assistants to Collectors shall not exercise any powers under this Act unless invested by ²[the Provincial Government] with the powers of Deputy Collectors, in which case they may exercise the powers hereby assigned to Deputy Collectors.

Saving of rights of proprietors as to tenures under Reg.VIII, 1819.

166. Nothing contained in this Act shall be held to affect the right, vested in proprietors of land under direct engagements with ³[the Crown], of bringing to sale for arrears of rent *patni taluks* and other similar tenures under the provisions of Regulation VIII, 1819⁴.

167. [*Commencement of Act*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

“Civil jail”

168. The words “civil jail” as used in this Act shall include the civil jail of the *zila* and any place appointed by the ⁵[Provincial] Government for the confinement of prisoners by any Court constituted under this Act:

“*Nazir*”

The word “*Nazir*” shall include any officer of a Court authorized to serve or execute its process:

¹The words “Except as provided in the last preceding section,” which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

²The Bengal Land-revenue (Settlement and Deputy Collectors) Regulation, 1833.

³These words were substituted for the word “Government” by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the word “Government”, *ibid.*

⁵The Bengal Patni Taluks Regulation, 1819.

⁶This word was substituted for the word “Executive” by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁷The clause in s. 168 as to number and gender, which was repealed by the Amending Act, 1903 (1 of 1903), is omitted.

of 1859.]

SCHEDULE.

FORM A.

(See section 44.)

FORM OF SUMMONS TO DEFENDANT.

No. (of suit) dated

In the Court of

A. B., Plaintiff.

(Name, description and address of plaintiff.)

C. D., Defendant.

(Name, description and address of defendant.)

Whereas the said A. B. has brought a claim against you in this Court for (*here specify particulars of claim as given in the statement*), you are hereby required to appear in person in this Court on the day of (*if not specially required to appear in person, state, "in person or by an agent who has personal knowledge of the subject or who shall be accompanied by a person who has such knowledge"*) to answer the abovenamed plaintiff, and you will bring with you (*or send by your agent*) (*here mention any document the production of which may be required by the plaintiff*) which the plaintiff desires to inspect, and all documents on which you may intend to rely in support of your defence. You will also bring with you your witnesses, if they are willing to attend without issue of process.

FORM B.

(See section 49.)

FORM OF WARRANT OF ARREST.

No. (of suit) dated

In the Court of

A. B., Plaintiff.

C. D., Defendant.

To the Nazir of the Court of the Collector of

Whereas the plaintiff in this suit has obtained an order from the Court for the arrest of the defendant,

(Schedule—Forms C and D.)

you are hereby commanded to bring the defendant before the Court on or before the day of to be dealt with according to law.

Dated this day of 18 .

FORM C.

(See section 49.)

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.
In the Court of

A.B., Plaintiff.

(Name, description and address of plaintiff.)

C.D., Defendant.

(Name, description and address of defendant.)

Whereas the said A.B. has brought a claim against you in this Court for (*here specify particulars of claim as given in the statement*) and has obtained a warrant for your arrest, you are hereby required, unless you admit the claim, to bring with you to the Court all documents on which you may intend to rely in support of your defence.

FORM D.

(See section 51.)

FORM OF SECURITY-BOND FOR APPEARANCE OF DEFENDANT.

Whereas A.B., plaintiff, has instituted a suit in the Court of the Collector of against C.D., defendant, and the said C.D. has been required to give security for his appearance at any time when called on while the suit is depending and until execution of the decree, I., E.F., hereby declare myself surety for the said C.D.'s appearance as aforesaid, and, in case of his making default in such appearance, I engage to pay any sum for the payment of which the said C.D. may be liable under the decree. (*If the suit be for the delivery of papers or accounts specify some sum to be fixed by the Collector.*)

of 1859.]

(Schedule—Forms E to G.)

FORM E.

(See sections 86.)

WRIT OF EXECUTION AGAINST THE PERSON.
Rep. by the Amending Act, 1891 (XII of 1891).

FORM F.

(See sections 86.)

WRIT OF EXECUTION AGAINST THE EFFECTS.
Rep. by the Amending Act, 1891 (XII of 1891).

FORM G.

(See section 124.)

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of Commissioner for sale of distrained property.

A.B., Distraîner.

(Name, description and address of the owner of the property.)

Whereas the said *A.B.* has applied to have the distrained property specified below sold for the recovery of alleged to be due to him as arrears of rent, you are hereby required either to pay the said sum to the said *A.B.*, or to institute a suit before the Collector to contest the demand within fifteen days from the receipt of his notice, failing which the property will be sold.

Dated this day of 18 .

Act XI of 1859.

(The Bengal Land-revenue Sales Act, 1859.)

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3. Latest day of payment.
4. (*Repealed.*)
5. Proviso as to certain descriptions of arrears.
6. Issue of notifications of sale.
Tender after latest day of payment not to stop sale.
7. Notice to *raiyats*, etc.
8. Claims of defaulter against Crown not to invalidate sale.
9. Deposits receivable from persons not proprietors.
10. Separation of shares held in common, by opening separate account.
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12. If objection be made, parties to be referred to Civil Court.
13. Sale of separate shares.
14. Entire estate may be sold under certain conditions.
15. Deposit for protection of estate from sale.
16. Withdrawal of deposit.
17. Estate under attachment.
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Proviso.
19. Sales where to be made.
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22. Deposit on account of purchase-money.
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53. Rights of purchaser being sharer in estate; and of purchaser of estate not sold for its own arrears.
54. Rights of purchasers of shares of estate.
55. Recovery of arrears due to defaulters.
56. Punishment for contempt.
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58. Government may purchase at sale.
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61. Interpretation.
62. Application of Act.

SCHEDULE A.—Certificate of sale.

SCHEDULE B.—(*Repealed.*)

Act XI of 1859.

Volume I.

Pages 423-424—

In the preamble, omit the words beginning with “and whereas it is expedient to provide for the voluntary registration of dependent *taluks*,” and ending with “held at rents sufficient for the security of the revenue;”.

[Omitted by West Ben. Act VII of 1950, section 3.]

[No. 45, dated the 2nd December, 1950.]
Previous sanction of the Board of Revenue to sales of estates for arrears of revenue, or other demands of Government, in the Province of Cuttack;]

and whereas it is just that a person having a lien upon an estate, and paying the money necessary to protect it from sale for arrears of revenue, should be reasonably secured;

and whereas it is expedient to afford sharers in estates, who duly pay their shares of the *sadar jama* of their estates, easy means of protecting their shares from sale by reason of the default of their co-sharers;

and whereas it is expedient to afford landholders, particularly absentees, facilities in guarding against the accidental sale of their estates for arrears of revenue by reason of the neglect or fraud of their agents;

and whereas it is expedient to provide for the voluntary registration of dependent *taluks* existing at the time of settlement;

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal—see the title and the concluding paragraph of s. 1, but was declared by s. 62 to extend only to such parts of that Province as are subject to the general Regulations.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

It has been extended, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 5, to the following Scheduled Districts, namely :—

the Western Duars, in the Jalpaiguri district; and
the Darjeeling district.

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4 (2).

(Secs. 1—4.)

and whereas it is expedient to protect the holders of registered under-tenures created since the settlement, and not resumable by the grantors or their representatives, from loss by the avoidance of their tenures on the occasion of a sale of the superior estate for arrears of public revenue, when the arrears can be realized by such sale, and to give absolute security to such tenures by special registry, when shown to be held at rents sufficient for the security of the revenue;

and it is therefore proper, for the above and other purposes, to improve the law relating to sales of land for arrears of revenue in the provinces of Bengal, [*Bihar and Orissa*];

It is enacted as follows:

1. [*Laws repealed.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

“ Arrear of
revenue ”
defined.

2. If the whole or a portion of a *kist* or instalment of any month of the era according to which the settlement and *kist-bandi* of any *mahal* have been regulated be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.

Latest day of
payment.

3. Upon the promulgation of this Act, the Board of Revenue at Calcutta shall determine upon what dates all arrears of revenue and all demands which, by the Regulations and Acts in force, are directed to be realised in the same manner as arrears of revenue; shall be paid up in each district under their jurisdiction, in default of which payment the estates in arrear in those districts, except as hereinafter provided, shall be sold at public auction to the highest bidder.

And the said Board shall give notice of the dates so fixed in the *Official Gazette*, and shall direct corresponding publication to be made, as far as regards each district in the language of that district, in the office of the Collector or other officer duly authorized to hold sales under this Act, in the Courts of the Judge, Magistrate (or Joint Magistrate, as the case may be), and *Munsifs*, and at every *thana*-station of that district;

and the dates so fixed shall not be changed except by the said Board by advertisement and notification in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect.

4. [*In Sylhet, personal property of defaulters may in the first instance be distrained and sold.*] *Rep. by the Amending Act, 1891 (XII of 1891).*

of 1859.]

(Secs. 5, 6.)

5. Provided always that no estate, and no share or interest in any estate, shall be sold for the recovery of arrears or demands of the descriptions mentioned below, otherwise than after a notification, in the language of the district, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed, for a period of not less than fifteen clear days preceding the date fixed for payment according to section 3 of this Act,

Proviso as to
certain
description
of arrears.

in the office of the Collector, or other officer duly authorized to hold sales under this Act,

in the Court of the Judge within whose jurisdiction the land advertised lies, and

in the *Munsif's* Court and police-*thana* of the division in which the estate or share of an estate to which the notification relates is situated, or, if the estate or share of an estate be situated within the jurisdiction of more than one *Munsif's* Court or police-*thana*, in some one or more of such Courts or *thanas*, and

also at the *cutcherry* of the *malguzar* or owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate, the same to be certified by the peon or other person employed for the purpose.

First.—Arrears other than those of the current year, or of the year immediately preceding.

Secondly.—Arrears due on account of estates other than that to be sold.

Thirdly.—Arrears of estates under attachment by order of any judicial authority, or managed by the Collector in accordance with such order.

Fourthly.—Arrears due on account of *takavi*, *pulbandi* or other demands not being land-revenue, but recoverable by the same process as arrears of land-revenue.

6. The Collector or other officer duly authorized to hold sales under this Act shall, as soon as possible after the latest day of payment fixed in the manner prescribed in section 3 of this Act, issue notifications, in the language of the district, to be affixed in his own office and in the Court of the Judge of the district, specifying the estates or shares of estates which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than

Issue of
notifications
of sale.

VOLUME I.

Page 426—

After the second paragraph of section 6, insert the following paragraphs, namely—

“The Collector or other officer duly authorised to hold sales, shall also issue notice of sale by registered post in the name of the recorded proprietors of the estate, and in case their number be more than five, in the name of at least five of the biggest recorded shareholders informing them of the particulars of sale. Such notice shall be issued simultaneously with, or as soon as may be after, the issue of the notification referred to above. If the sale does not take place the cost of such registered notices shall be payable by the defaulters within fifteen days of the date on which the sale was to take place and if it is not paid within that period, it shall be realised from the defaulters by any process authorised for realising an arrear of public revenue.

No sale shall take place until the officer conducting the sale has satisfied himself that the notification of sale has been duly published and the notices of sale have been sent to proprietors by registered post but the omission to serve such notice on any proprietor or any defect in the service of any such notice shall not by itself be a ground for the annulment of a sale under this Act.”

(Inserted by Bengal Act II of 1943, section 2.)

[No. 31, dated the 22nd May 1943.]

situated, and also at the *cutcherry* of the *malguzar* or the owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate,

forbidding the *raiya*s and under-tenants to pay to the defaulting proprietor any rent which has fallen due after the day fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums so paid.

Claims of
defaulter
against
Crown not to
invalidate sale.

8. No claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of '[the Provincial Government], and no private demand or cause of action whatever, held or supposed to be held by any defaulter against '[the Crown], shall bar or render void or voidable a sale under this Act; nor shall the plea that money belonging to the defaulter, and sufficient to pay the arrear of revenue due, was in the Collector's hand bar or render void or voidable a sale

¹This word was substituted for the word "fifteen" by s. 3 of the Bengal Land-revenue Sales Act, 1868 (Ben. Act VII of 1868).

²The words "or more than thirty" were repealed, *ibid*.

³These words were substituted for the word "Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the word "Government", *ibid*.

of 1859.]

(Secs. 9, 10.)

under this Act, unless such money stand in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter, or after the written agreement provided for in section 15 of this Act, the Collector shall have neglected, or refused on insufficient grounds, to transfer it in payment of the arrear of revenue due.

9. The Collector or other officer as aforesaid shall, at any time before sunset of the latest day of payment determined according to section 3 of this Act, receive as a deposit from any person not being a proprietor of the estate or share of an estate in arrear, the amount of the arrear of revenue due to be credited in payment of the arrear at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate.

Deposits
receivable
from persons
not proprietors.

And in case the person so depositing, whose money shall have been credited in the manner aforesaid, shall be a party in a suit pending before a Court of Justice for the possession of the estate or share from which the arrear is due or any part thereof, it shall be competent to the said Court to order the said party to be put into temporary possession of the said estate or share, or part thereof, subject to the rules in force for taking security in the cases of parties in civil suits.

And if the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale, or which he believed in good faith would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest as the Court may determine, from the defaulting proprietor.

And if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate or share or part thereof, the amount so credited shall be added to the amount of the original lien.

10. When a recorded sharer of a joint estate, held in common tenancy, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect.

Separation of
shares held
in common,
by opening
separate
account.

The application must contain a specification of the share held in the estate by the applicant.

(Secs. 11, 12.)

The Collector shall then cause to be published in his own office, in the Court of the Judge, Magistrate (or Joint-Magistrate as the case may be), and *Munsifs*, and in the police-*thanas* in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him.

If, within six weeks from the date of the publication of these notices, no objection is made by any other recorded sharer, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

Separation of shares consisting of specific portions of land, by opening separate accounts.

11. When a recorded sharer of a joint-estate, whose share consists of a specific portion of the land of the estate, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of *sadar jama* heretofore paid on account of it.

On the receipt of this application the Collector shall cause it to be published in the manner prescribed for publication of notice in the last preceding section.

In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant and shall credit separately to his share all payments made by him on account of it.

The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

If objection be made, parties to be referred to Civil Court.

12. If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him, or if the application be in respect of a specific portion of the land of an estate, that the amount of *sadar jama* stated by the applicant to have been heretofore paid on account of such portion of land is not the amount which has been recognized by the other sharers as the *jama* thereof, the Collector shall refer the parties to the Civil Court and shall suspend proceedings until the question at issue is judicially determined.

of 1859.]

(Secs. 13—15.)

13. Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due.

Sale of separate shares.

In all such cases notice of the intention of excluding the share or shares from which no arrear is due shall be given in the advertisement of sale prescribed in section 6 of this Act. The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion, or the aggregate of the several separate portions, of *jama* assigned thereto.

14. If in any case of a sale held according to the provisions of the last preceding section the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector or other officer as aforesaid shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to ¹[the Provincial Government] the whole arrear due from such share.

Entire estate may be sold under certain conditions.

If such purchase be completed, the Collector or other officer as aforesaid shall give such certificate and delivery of possession as are provided for in sections 28 and 29 of this Act to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale.

If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after notification for such period and publication in such manner as is prescribed in section 6 of this Act.

15. If any recorded proprietor or co-partner of an estate shall deposit with the Collector money, or Government securities endorsed and made payable to the order of the Collector and shall sign an agreement pledging the same ²[to the Provincial Government] by way of security for the *jama* of the entire estate, and authorizing the Collector to apply to the payment of any arrear

Deposit for protection of estate from sale.

¹See foot-note 3 on p. 426, *ante*.

²These words were substituted for the words "to Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Secs. 16—18.)

of revenue that may become due from that estate the whole or any portion of the said money or securities that may be necessary for that purpose, then in the case of any arrear of revenue due from the said estate not being paid before sunset of the latest day of payment fixed under section 3 of this Act the Collector shall apply to the payment of such arrear the said money or securities, or such part thereof or of any interest due on the said securities, as may be necessary; and for this purpose the Collector shall first apply any money that may be in his hands and any interest that may be due upon such securities, and may then sell and transfer the securities for any balance that may remain.

And so long as any money or securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate for the protection of which the said deposit was made shall be exempted from sale for arrears of revenue.

All moneys and securities so deposited shall be exempt from attachment otherwise than in execution of a decree of a Civil Court.

Withdrawal of
deposit.

16. It shall be competent to the person making a deposit under the provision of the last preceding section, or his representative or assignee, at any time, to withdraw the deposit and to revoke the pledge of the same.

Estate under
attachment.

17. 1* * * * * no estate held under attachment by the Revenue-authorities otherwise than by order of a judicial authority shall be liable to sale for arrears accruing whilst it was so held under attachment.

And no estate held under attachment or managed by a Revenue officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment or management, until after the end of the year in which such arrears accrued.

Power to exempt
from sale.

18. It shall be competent to the Collector or other officer as aforesaid, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale; and in like manner it shall be competent to the Commissioner of Revenue, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such

¹The original words and figures which were repealed by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 111 of 1881), are omitted.

of 1859.]

(Secs. 19—21.)

estate or share from sale, by a special order to the Collector or other officer as aforesaid to that effect in each case; and no such sale shall be legal if held after the receipt of such order of exemption:

Provided, however, ¹that the Collector or other officer as aforesaid, or the Commissioner, shall duly record in a proceeding the reason for granting such exemption; and provided also that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector or other officer as aforesaid of the order of exemption. Proviso.

19. Sales shall ordinarily be made by the Collector or other officer as aforesaid in the land-revenue office at the *sadar* station of the district: Sales where to be made.

Provided, however, that it shall be competent to the ²[Commissioner] to prescribe a place for holding sales other than such office whenever ³[he] shall consider it beneficial to the parties concerned.

20. In case the Collector or other officer as aforesaid shall be unable, from sickness, from the occurrence of a holiday or from any other cause, to commence the sale on the day of sale fixed as aforesaid, or if, having commenced it, he be unable, from any cause, to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue and announcing the adjournment by written proclamation stuck up in his *cutcherry*; and so on, from day to day, until he shall be able to commence upon or to complete the sale; but with the exception of adjournments so made, recorded and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid. Adjournment of sales.

21. On the day of sale fixed according to section 6 of this Act, sales shall proceed in regular order; the estate to be sold bearing the lowest number on the *tauji* or register in use in the Collector's office of the district being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector or other officer as aforesaid to put up any estate out of its regular order Order of selling.

¹Formal words which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

²This word was substituted for the words "Board of Revenue" by the Decentralization Act, 1914 (IV of 1914).

³This word was substituted for the word "they", *ibid.*

(Secs. 22—24.)

by number, except where it may be necessary to do so in default of deposit, as provided in section 22 of this Act.

Deposit on account of purchase-money.

22. The party who shall be declared the purchaser of an estate or share of an estate at any such public sale as aforesaid shall be required to deposit immediately, or as soon after the conclusion of the sale of the estate or share as the Collector or other officer as aforesaid may think necessary, either in cash, ¹[Reserve Bank of India] ^{2*} * post-bills, ³[currency notes], or Government securities, to be valued at the market-rate of the day, duly endorsed, twenty-five *per cent.* on the amount of his bid; and in default of such deposit the estate or share shall forthwith be put up again and sold.

Full payment of purchase-money.

23. The full amount of purchase-money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of the estate or share of an estate bought by him took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth; and, in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share shall be re-sold, and the defaulting purchaser shall forfeit all claim to the estate or share, or to any part of the sum for which it may subsequently be sold.

And, in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of public revenue, and such difference shall be taken and considered to be a part of the purchase-money, and shall be dealt with in the manner hereinafter prescribed for the disposal thereof.

Re-sale.

24. When default is made in the payment of purchase-money, a notification of the intended re-sale shall be published for the period and in the manner prescribed in section 6 of this Act, but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred; and if the payment or tender of payment of the arrear on account of which the estate or share was

¹These words were substituted for the words "Bank of Bengal" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939.)

²The words "notes or," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

³These words were inserted by the Amending Act, 1903, (1 of 1903).

of 1859.]

(Secs. 25—28.)

first sold, and of any arrear which may have subsequently become due, shall be made by or on behalf of the proprietor of the estate or share before sunset of the third day, the issue of the notification of re-sale shall be stayed. The rules contained in the last preceding section shall be applicable to every such re-sale:

Provided that, if default of payment of purchase-money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realized.

25. [Appeals.] Rep. by the Bengal Land-revenue Sales Act, 1868 (Ben. Act VII of 1868).

26. It shall be competent to the Commissioner of Revenue, on the ground of hardship or injustice, to annulment of sale in special cases.

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Page 433—

In section 27—

- (a) after the words “no appeal shall have been preferred” insert the words, figures, letters and brackets “or in respect of which no application under section 37A has been made or in respect of which no appeal under sub-section (3) of section 37B has been preferred”; and
- (b) after the words “dismissed by the Commissioner” insert the words, figures, letters and brackets “or in respect of which an application under section 37A may have been made or an appeal under sub-section (3) of section 37B may have been preferred and such application or appeal has been dismissed”.

(Inserted by Bengal Act VII of 1942, section 2.)

[No. 26, dated the 22nd December, 1942.]

26. Immediately after the sale becoming final and conclusive the Collector or other officer as aforesaid shall give to the purchaser a certificate of title in the form prescribed in Schedule A annexed to this Act. Certificate of sales.

¹The words “if they see cause, may recommend to the Local Government to annul the sale; and the Local Government in any such case” were omitted by the Decentralization Act, 1914 (IV of 1914).

²The words “sixtieth” and “sixty” were substituted for the words “thirtieth” and “thirty” respectively, by s. 4 of the Bengal Land-revenue Sales Act, 1868 (Ben. Act VII of 1868).

(Secs. 29—32.)

And the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate or share of an estate sold being vested in the person or persons named from the date specified.

And the Collector shall also notify such transfer by written proclamation in his own office, and in the Courts of the *Munsifs* and police-*thanas* within whose jurisdictions any part of the estate or share sold shall be situated.

Delivery of
possession.

29. The Collector or other officer as aforesaid shall order delivery of possession of the estate or share purchased to be made by removing any person who may refuse to vacate the same, and by proclamation to the occupants of the property by beat of drum or in such other mode as may be customary, at some convenient place or places; and by affixing a copy of the certificate at the *mâl cutcherry* or in some conspicuous place of the estate or share of an estate purchased.

Liability of
purchaser.

30. The party certified as the proprietor of an estate or share of an estate by purchase under this Act shall be answerable for all instalments of the revenue of Government which may fall due after the latest day of payment aforesaid.

Application of
purchase-money

31. The Collector shall apply the purchase-money, first, to the liquidation of all arrears due upon the latest day of payment from the estate or share of an estate sold; and, secondly, to the liquidation of all outstanding

Page 434—

In section 31 *after* the words “outstanding demands” *insert* the words and figure “including the cost of notices referred to in section 6”.

(Inserted by Bengal Act II of 1943, section 3.)

[No. 31, dated the 22nd May 1943.]

And, if before payment to the late proprietor or proprietors of any surplus that may remain of the purchase-money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor, except under precept of a Civil Court.

Notification of
annulment of
sale.

32. The annulment by a Commissioner or by ¹[Board of Revenue] of a sale made under this Act shall be publicly notified by the Collector or other officer as

¹These words are substituted for the word “Government” by the Decentralization Act, 1914 (IV of 1914).

of 1859.]

(Sections 33, 34.)

aforesaid, in the same manner as the becoming final and conclusive of sales is required to be notified by section 28 of this Act; and the amount of deposit and balance of purchase-money shall be forthwith returned to the purchaser with interest thereon at the highest rates of the current public securities: which shall be paid by ¹[the Provincial Government], unless the proprietor shall have become liable for the same under the provisions of ²[section 2 of the Bengal Land-revenue Sales Act, 1868,] or section 26 of this Act.

Ben. Act
VII
1868.

33. No sale for arrears of revenue or other demands realizable in the same manner as arrears of revenue are realizable, made after the passing of this Act, shall be annulled by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of: and no such sale shall be annulled upon such ground, unless such ground shall have been declared and specified in an appeal made to the Commissioner under ²[section 2 of the Bengal Land-revenue Sales Act, 1868]; and no suit to annul a sale made under this Act shall be received by any Court of Justice, unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in section 27 of this Act: and no person shall be entitled to contest the legality of a sale after having received any portion of the purchase-money:

Jurisdiction of
Civil Courts in
suits to annul
sales.

Provided, however, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or omission connected with a sale under this Act from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged.

Proviso.

34. If a sale made under this Act be annulled by a final decree of a Civil Court, application for the execution of such decree shall be made within six months after the date thereof; otherwise the party in whose favour such decree was passed shall lose all benefit therefrom.

Effects of
annulment of
sales by decree
of Court.

And no order for restoring such decree-holder to possession shall be passed until any amount of surplus purchase-money that may have been paid away by order of a Civil Court be repaid by him, with interest at the highest rate of the current Government securities.

¹These words were substituted for the words "the Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words and figures were substituted for the word and figure "section 25" by the Amending Act, 1903 (1 of 1903).

(Secs. 35—37.)

And, if such party shall neglect to pay any amount so recoverable within six months from the date of such final decree, he shall lose all benefit therefrom.

If sale annulled,
purchase-money
to be refunded.

35. In the event of a sale being annulled by a final decree of a Court of Justice, and the former proprietor being restored to possession, the purchase-money shall be refunded to the purchaser by [the Provincial Government], together with interest at the highest rate of the current public securities.

Dismissal of
suit brought
to oust
purchaser on
ground that
purchase was
made for
another.

36. Any suit brought to oust the certified purchaser as aforesaid on the ground that the purchase was made on behalf of another person not the certified purchaser, or on behalf partly of himself and partly of another person, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

Rights of
purchaser of
permanently-
settled estate
sold for its
own arrears.

37. The purchaser of an entire estate in the permanently-settled districts of Bengal, [*Bihār and Orissa*], sold under this Act for the recovery of arrears due on account of the same shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement; and shall be entitled to avoid and annul all under-tenures and forthwith to eject all under-tenants, with the following exceptions:—

First.—*Istimrāri* or *mukarrari* tenures which have been held at a fixed rent from the time of

Pages 436-437—

For section 37, substitute the following section, namely:—

Rights of a purchaser
of a permanently settled
estate sold for its own
arrears.

“37. (1) The purchaser of an entire estate in the permanently settled districts of West Bengal sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed after the time of settlement and shall be entitled to avoid and annul all tenures, holdings and leases with the following exceptions:—

- (a) tenures and holdings which have been held from the time of the permanent settlement either free of rent or at a fixed rent or fixed rate of rent, and
- (b) (i) tenures and holdings not included in exception (a) above made, and
- (ii) other leases of land whether or not for purposes connected with agriculture or horticulture, existing at the date of issue of the notification for sale of the estate under this Act:

Provided that notwithstanding anything contained in any law for the time being in force or in any lease or contract no person shall be entitled to hold under such a purchaser as is aforesaid any

[No. 45, dated the 2nd December, 1950.]

After section 37, insert the following sections:—

“37A. Where any estate or share of an estate has been sold under this Act, the defaulting holder of the estate or of a share thereof or any person who holds an interest therein by virtue of a title acquired before such sale or any person whose interests are affected by the sale may, at any time within thirty days from the date of the sale, apply to the Collector to have the sale set aside on his depositing with the Collector—

Application for setting aside sale.

(a) for payment to the purchaser, a sum equal to three per cent. of the purchase-money but not less than one rupee; and

(b) for payment to the Provincial Government, a sum equal to the amount specified in the notification of sale as that for the recovery of which the sale was ordered together with such costs, if any, as the Provincial Government may have incurred subsequent to the issue of such notification of sale.

37B. (1) Notwithstanding anything contained elsewhere in this Act where the deposit required by section 37A is made within thirty days from the date of the sale, the Collector shall make an order setting aside the sale, provided that no order shall be made unless the notice of the application has been given to the purchaser.

Sale when to be set aside.

(2) No suit to set aside an order made under this section shall be brought by any person against whom such order is made.

38. The following rules for the registration of *talukdari* and other similar tenures created since the *Registration of certain tenures and farms.*
Pages 437-441—

Strike out sections 38 to 51 (both inclusive) and insert the following note, namely:—

(Repealed by West Ben. Act VII of 1950, section 5.)

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stry.

[No. 45, dated the 2nd December, 1950.]

against any auction-purchaser of a sale for arrears of revenue except the Government.

Special registry shall secure such tenures and farms against any auction-purchaser at a sale for arrears of revenue including the Government.

40. The holder of any *talukdari* or other similar tenure, such as is described in section 38 of this Act, desirous of registering it, shall apply by petition to the Collector of the district to which the estate belongs.

Application for registry.

The application shall state which description of registry is desired, and shall contain the following particulars so far as the same are ascertainable:—

- (1) the *pargana* or *parganas* in which the tenure is situated;
- (2) the nature of the tenure;
- (3) the name or names of the village or villages whereof the land is composed, or wherein it is situated;
- (4) the area of the land comprised in the tenure, with its boundaries in complete detail;

(Sec. 41.)

- (5) the amount of rent payable annually for the tenure and whether the rent is fixed for a term of years or in perpetuity, and the duties, if any, required to be performed on account of it;
- (6) the date of the deed constituting the tenure, or the date when the tenure was created;
- (7) the name of the proprietor who created the tenure;
- (8) the name of the original holder of the tenure;
- (9) the name of the present possessor, and, if he be not the original holder, the mode in which he succeeded to the tenure, whether by inheritance, gift, purchase or otherwise, and whether he holds jointly or solely.

Holders of such farms as are described in the said section may apply in like manner for registry of the same.

The application shall contain such of the foregoing particulars as are applicable to farms.

Procedure on
application
for common
registry.

41. When the application is for common registry, the Collector shall serve a notice on the recorded proprietor or proprietors of the state in which the tenure or farm is situated, or the authorized agent of such proprietor or proprietors, with a copy of the application annexed; and shall cause a notice, with a copy of the application annexed, to be affixed in his office, and at the *mal-cutcherry* of the estate in which the tenure or farm is situated, or in such other place or places as in the opinion of the Collector may be best suited to give publicity to the application, requiring the proprietor or any party interested, within thirty days from the issue of the said notice, to file any objections he may have to the registry of the tenure or farm, or to any statement contained in the application.

If within the limited time no objection is made the Collector shall register the tenure or farm.

If within the limited time an objection is made by any recorded proprietor, or by any party interested not being a proprietor, the Collector shall examine the person so objecting or his authorized agent, and, if it shall appear to him that such person has probable ground of objection, the Collector shall suspend proceedings, and shall refer the parties to the Civil Court; otherwise he shall grant the application.

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall register the tenure or farm.

of 1859.]

(Secs. 42—44.)

42. When the application is for special registry, the Collector shall serve and issue the notices prescribed in the last preceding section.

Procedure on application for special registry.

If within the limited time no objection is made, the Collector shall cause any inquiry that he may deem necessary for the security of the Government revenue to be made; and, if he is satisfied that the Government revenue of the parent estate is sufficiently secured so far as it may be affected by the tenure or farm in question, he shall report the case to the Commissioner, who, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application; otherwise the application shall be rejected.

If within the limited time any recorded proprietor or any party interested not being a proprietor object to the registry, the Collector shall examine the person so objecting or his authorized agent, and, if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and shall refer the parties to the Civil Court; otherwise he shall proceed as if no objection had been made.

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

43. Leases of lands of the description specified in the fourth exceptional class in section 37 may be registered, at the option of the holders in the manner and under the rules hereinbefore provided for the registry of *talukdari* and other similar tenures.

Registration of leases of certain lands.

44. Tenures of the first and second exceptional classes in section 37 may be registered at the option of the holders; and when so registered shall be entered only in the special register.

Registration of old tenures.

Application for such registry shall contain the particulars specified in section 40 so far as the same are ascertainable, and notices shall be served and issued in the manner prescribed in section 41.

If within the limited time no objection is made by any recorded proprietors or by any party interested not being a proprietor, the Collector shall make such inquiries as may be necessary to satisfy him as to the validity of the tenure; and, if the result be to satisfy him that the tenure is valid, he shall report the case to the Commissioner, who, if also satisfied that the tenure is valid, shall direct it to be entered in the special register, otherwise the application for registry shall be rejected.

(Secs. 45—49.)

If within the limited time, any recorded proprietor or other party as aforesaid object to the registry of the tenure, the Collector shall examine the person so objecting or his authorized agent, and, if it shall appear to him that such person has probable ground of objection, shall suspend proceedings and refer the parties to the Civil Court; otherwise he shall proceed as if no objection had been made.

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time:

Proviso.

Provided always that nothing contained in this section shall be understood as rendering registration necessary for the protection of *bona fide* tenures of the description herein referred to.

45. [Time for application for registry of tenures and farms.] *Rep. by the Bengal Land-revenue Sales (Amendment) Act, 1862 (Ben. Act III of 1862).*

Expenses of measurement, survey or local inquiry.

46. The actual expenses of any measurement, survey or local inquiry made under sections 42 and 44 of this Act, shall be borne by the party who applies for the registry of his tenure or farm; and such party may be required by the Collector from time to time to make such advances on this account as he may consider necessary.

Civil Court not competent to order entry in special register.

47. No Civil Court shall be competent to order the Revenue-authorities to enter any tenure or farm in the special register:

Provided always that the refusal of the Revenue-authorities so to register any tenure or farm shall not affect the title of the holder, whatever it may be.

Suit for cancelment of registry of tenure or farm.

48. Subject to the general law of limitation, any person thinking himself wronged by the registry of a tenure or farm may file a suit for the cancelment of the same.

Proceedings of Revenue-authorities in registration of tenures, etc.

49. In the execution of their functions in the registration of tenures and farms under this Act, all subordinate Revenue-authorities shall proceed in accordance with the general instructions which they may receive from the superior Revenue-authorities to whom they are subordinate, and from the '[Provincial Government]; and all orders passed under the sections aforesaid shall be open to appeal in usual course.

*These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1859.]

(Secs. 50—52.)

The order of a Commissioner for the special registry of a tenure under the provisions of this Act shall be open at any time within one year from the date of registry to revision by the Board of Revenue ^{1* * *}, on the ground of the Government revenue not having been sufficiently secured, or of the invalidity of the tenure, as the case may be.

50. Entry in the special register shall be an effectual protection of the tenure or farm so registered, unless, in a suit instituted ²[by the Provincial Government] in a Civil Court within the period allowed for suits for the recovery of the public revenue, a decree be passed pronouncing the registration to have been obtained by fraud, to the injury of the Government revenue:

Effect of entry in special register.

Provided that a tenure or farm in the hands of a *bona fide* purchaser for value shall not be avoided by reason of such fraud.

But the tenure or farm shall be liable to such amount of rent as would have been fair and equitable at the time of the special registry thereof—such amount to be fixed by the Collector.

51. Tenures and farms of the third exceptional class described in section 37 of this Act, for the special registration of which application shall be made within the prescribed time, and in respect of which the Collector shall have commenced the inquiry prescribed in section 42, shall, in case of the sale of the parent estate for arrears of revenue, be protected pending the duration of such inquiry, and shall be protected eventually by registration, if the final award of the Revenue-authorities upon such application be in favour of the claimant.

Protection of talukdari tenures pending inquiry, in case of sale of parent estate for arrears of revenue.

52. The purchaser of an estate in a district not Rights of
Pages 441-442—

For section 52 substitute the following section, namely:—

“52. The provisions of section 37 of this Act shall Rights of purchaser of an estate not permanently settled, sold for its own arrears. *mutatis mutandis* apply in the case of a purchaser of an estate in a district of West Bengal not permanently settled, sold under this Act for the recovery of arrears due on account of the same.”

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(Substituted by West Ben. Act VII of 1950, section 5.)

[No. 45, dated the 2nd December, 1950.]

¹These words were substituted for the words “by Government” by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Secs. 53, 54.)

the conditions of his settlement, have been competent to set aside, alter or renew, saving always and except leases of lands whereon dwelling-houses, manufactories or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship or burning or burying grounds have been made, or wherein mines have been sunk, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect:

Provided that nothing contained in this section shall be construed to entitle any purchaser of land at a public sale for arrears of revenue to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid, than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, or in cases in which it may be proved that, according to the custom of the *pargana*, *mauza* or other local division, such persons are liable to be called upon for any new assessment or other demand not interdicted by the ¹[law for the time being in force.]

Rights of
purchaser
being sharer
in estate ;

and of purchaser
of estate not sold
for its own
arrears.

53. Excepting 2* * * sharers with whom the Collector, under sections 10 and 11 of this Act, has opened separate accounts, any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-partner, or who by re-purchase or otherwise may recover possession of the said estate, after it has been sold for arrears under this Act, and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself, shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale, and shall not acquire any rights in respect to under-tenants or *rai-yats* which were not possessed by the previous proprietor at the time of the sale of the said estate.

Rights of
purchasers of
shares of
estate.

54. When a share or shares of an estate may be sold under the provisions of section 13 or section 14, the purchaser shall acquire the share or shares subject to all encumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners.

¹These words were substituted for the words "Regulations of Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words and figures "shares in estates under *batwara* who may have saved their sharers from sale under sections 33 and 34 Regulation 19, 1814, and" which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

of 1859.]

(Secs. 55—60.)

55. Arrears of rent which on the latest day of payment may be due to the defaulter from his under-tenants or *raiyats* shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the said latest day.

Recovery of arrears due to defaulters.

56. Any Collector or other officer as aforesaid conducting a sale under this Act shall be competent to punish any contempt committed in his presence in open *cutcherry* or office for the time being, by fine, to an extent not exceeding two hundred rupees, commutable, if not paid, to imprisonment in the civil jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector or other officer as aforesaid, shall carry his sentence into effect:

Punishment for contempt.

Provided that an appeal from any order passed under this section shall lie to the Revenue Commissioner, whose decision shall be final.

57. A default to make good a bid by making the deposit required by section 22 of this Act shall be held to be a contempt.

Default as to deposit a contempt.

58. When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid, the Collector or other officer as aforesaid may purchase the estate on account of the ¹[Provincial Government] for one rupee, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector or other officer as aforesaid may take or purchase the estate on account of the ¹[Provincial Government] at the highest amount of bid; in both which cases the ¹[Provincial Government] shall acquire the property subject to the provisions of this Act.

Government may purchase at sale.

59. [*Fees and charges demandable by Collector.*] *Rep. by the Bengal Land-revenue Sales (Amendment) Act, 1862 (Ben. Act III of 1862).*

60. The provisions of Regulation VII, 1822², and Regulation IX, 1825³, shall be in force in every estate in any part of which a measurement, survey, or local

Regulations VII, 1822, and IX, 1825, in force in certain estates.

¹These words were substituted for the word "Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The Bengal Land-revenue Settlement Regulation, 1822.

³The Bengal Land-revenue Settlement Regulation, 1825.

(Secs. 61, 62.)

inquiry may be made under this Act, and in every estate purchased or taken on account of ¹[the Provincial Government] under this Act.

Interpretation.

61. In the construction of this Act the word "Collector" shall include a Deputy Collector or other officer exercising, by the authority of ¹[the Provincial Government], the powers of a Collector or Deputy Collector.

Application of Act.

62. The operation of this Act shall be confined to such parts of the Lower Provinces in the Presidency of Fort William in Bengal as are or shall be subject to the general Regulations of that Presidency.

¹These words were substituted for the word "Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1859.]

(Schedules.)

SCHEDULE A.

I certify that A. B. has purchased, under Act No. 11 of 1859, the *mahal* (or share of a *mahal*) specified below, standing in the *tauzi* of the district of and that his purchase took effect on the day of (being the day after that fixed for last day of payment).

(Signed.)

D. E.,
Collector.

SPECIFICATION.

(If of an entire mahal.)

Tauzi numberName of *mahal*

Name of the former proprietor

Sadar jama

(If of a share of a mahal.)

Tauzi number of the entire *mahal*Name of the entire *mahal**Sadar jama* of the entire *mahal*

Description of the share sold

Subordinate *tauzi* number of the share sold

Name of the former proprietor of the share sold

Sadar jama for which the share sold is separately liable.

SCHEDULE B.

FEES.

Rep. by the Amending Act, 1903 (I of 1903).

This Schedule is referred to in section 28.

Act XII of 1859.

(The Calcutta Pilots Act, 1859.)

CONTENTS.

PREAMBLE.

SECTION.

1. (*Repealed.*)
2. Trial of pilots accused of breach of duty.
3. Appointment of Judge.
4. Appointment of prosecutor.
5. Trial to be held before Judge and jury.
6. Lists of merchants and pilots liable to serve on jury.
7. Notice to prosecutor and accused of time and place for appointing jury.
8. Appointment of jury.
9. Day of trial to be fixed and summons to issue to jurors.
Penalty for non-attendance.
10. Trial how to proceed if any juror does not attend.
11. Register of jurors who have served.
12. (*Repealed.*)
13. Judge may summon witnesses to attend at certain time and place.
Examination of witnesses about to leave Calcutta.
14. Penalty for witnesses not attending or refusing to give evidence.
15. Arrest.
16. Verdict of jurors.
17. Sentence if accused found guilty.
Preparation of schedule of offences and punishments.
Acquittal.
18. No sentence final till approved by Government.
Central Government may remit sentence or mitigate punishment.
19. If verdict of jurors be manifestly contrary to evidence or trial otherwise
insufficient.
20. Power to make rules.
21. Marine authorities or Government may pass orders upon charge of breach of
duty where trial unnecessary.
22. Withdrawal of license from licensed pilot.
23. Act applicable to persons in Pilot-service and to licensed pilots.

Act XII of 1859.

(The Calcutta Pilots Act, 1859.)¹

(4th May 1859.)

An Act to make better provision for the trial of pilots at the Presidency of Fort William in Bengal for breach of duty.

Whereas it is expedient to amend the law for the trial of persons employed in the Pilot Service of Government at the Presidency of Fort William in Bengal, when accused of breach of duty, and to extend the same to persons licensed to act as pilots at the said Presidency. It is enacted as follows: Preamble.

1. [*Repeal of Acts XXIV of 1845 and 1 of 1851.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

2. When any person employed in the Pilot Service of Government at the Presidency of Fort William in Bengal, or licensed to act as a pilot at the said Presidency, shall be accused of having committed any breach of duty while engaged in such service or acting under such license, and it shall appear to the ²[Port Officer] or to the ³[Central Government] that such person ought to be brought to trial for such breach of duty, such person shall be brought to trial upon a charge or charges framed by the said ²[Port Officer], or such other person as the ³[Central Government] shall direct, before a Court constituted under the provisions of this Act. Trial of pilots accused of breach of duty.

3. The ³[Central Government] shall appoint a fit person to be Judge of the said Court. Appointment of Judge.

4. The ³[Central Government] shall appoint such person as ⁴[it] may think proper to conduct the proceedings before the Court as prosecutor on the part of Government. Appointment of prosecutor.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903).

LOCAL EXTENT.—This Act applies to all persons employed in the Pilot Service at the Presidency (i.e., at Calcutta) and borne on the rolls of the Government establishment, and to all persons licensed to act as pilots at the Presidency (i.e., at Calcutta).

²These words were substituted for the words "Superintendent of Marine" by the Amending Act, 1903 (1 of 1903).

³These words were substituted for the words "Governor General in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴This word was substituted for the word "he" by paragraph 5(2), *ibid.*

(Secs. 5—9.)

Trial to be held before Judge and jury.

5. Every trial under this Act shall be held before the said Judge and a jury composed of two merchants of Calcutta, a master of a merchant-ship lying in the Port of Calcutta, and a pilot of not less than twenty years' service.

Lists of merchants and pilots liable to serve on jury.

6. The Judge shall cause to be prepared and shall keep two separate lists, one containing the names of merchants, the other containing the names of pilots, liable to serve on such jury.

The names in each list shall be arranged in alphabetical order, and the place of abode and quality or business of each person named shall be stated.

Notice to prosecutor and accused of time and place for appointing jury.

7. When the Judge shall be about to hold a trial under this Act, he shall give notice to the prosecutor and to the party accused of a time and place to be fixed by the Judge for appointing a jury to serve at such trial.

Appointment of jury.

8. At the time and place mentioned in the notice the Judge in the presence of the prosecutor and the person accused shall read over the names which first occur in each of the said lists of those merchants and pilots who he has reason to believe are present in Calcutta and capable of attending as jurors at the trial; and shall also propose the name of a master of a merchantship lying in the Port of Calcutta whom he deems qualified to serve on such jury.

If no objection be made and allowed, the persons so nominated shall be the jury to serve at the trial.

If the prosecutor or the party accused shall object to any of the persons named as jurors, he shall assign the grounds of his objection, and such objection shall forthwith be decided by the Judge.

If the objection be allowed, the Judge shall read from the said lists or propose (as the case may be) another name in the place of the one objected to, and the person so nominated shall serve on the jury, provided no objection to such person be made and allowed as aforesaid.

Day of trial to be fixed and summons to issue to jurors.

9. When a jury has been appointed under the last preceding section, the Judge shall fix a day for the trial and shall summon by writing under his hand the persons so appointed to sit as a jury.

Penalty for non-attendance.

If any such person when duly summoned shall, without such excuse as the Judge shall allow to be sufficient, neglect or refuse to attend at the time appointed or to remain in attendance until the trial shall be completed, it shall be lawful for the said Judge to impose upon any such person a fine not exceeding

of 1859.]

(Secs. 10—13.)

two hundred rupees for every such default; and such fine, if not paid, shall be levied by distress and sale of the goods and chattels of the defaulter under a warrant to be issued for that purpose by the Judge.

Such warrant may be transmitted by the Judge to any '[Presidency Magistrate] for the town of Calcutta, and thereupon such Magistrate shall endorse the same and shall cause it to be executed in the same manner as if the warrant had been issued by such Magistrate.

10. If for any cause any of the persons summoned to attend as jurors shall not be in attendance at the time fixed for the commencement of the trial, the trial may with the consent of the prosecutor and the party accused be held before the Judge and such jurors as shall be in attendance. Trial how to proceed if any juror does not attend.

If such consent be not given, the place of the absent juror shall be supplied by some other person selected by the Judge from the same profession or calling as the person originally summoned and who shall consent to serve, provided no objection to such person be made and allowed in manner aforesaid.

If the parties or either of them do not consent that the trial shall be held before the Judge and such jurors as may be in attendance and the place of the absent juror cannot be supplied by a person consenting to serve, the trial shall be postponed to another day and the Judge shall either re-summon the same jury or appoint and summon another jury in the manner hereinbefore provided.

11. The Judge shall register in a book the names of all jurors mentioned in either of the said two lists who have attended and served on a trial held under this Act. Register of jurors who have served.

A juror who has served shall not be required again to serve and his name shall be excluded in reading over the jury-lists until all the persons named in the said lists who are present in Calcutta and capable of attending as jurors shall have served.

12. [*Jurors to be sworn.*] *Rep. by the Indian Oaths Act, 1873 (X of 1873).*

13. It shall be lawful for the Judge of the said Court, at the instance of the prosecutor or of the party accused, or of his own motion, by writing under his hand, to summon any person to attend as a witness at Judge may summon witnesses to attend at certain time and place.

¹These words were substituted for the words "Magistrate of Police" by s. 2(2) of the Bengal Pilot Service (Centralisation of Administration) Act, 1929 (XI of 1929).

(Secs. 14, 15).

Examination
of witnesses
about to
leave
Calcutta.

a time and place to be specified in the summons, for the purpose of being examined at any trial before the said Court; or if such person shall be about to depart from Calcutta so as to be unable to attend at such trial without serious inconvenience, then to be examined before the Judge of the said Court before the day fixed for the trial:

Provided always that due notice of the time and place of such examination shall be given to the accused party; provided also that such witness may nevertheless be examined at the trial if he shall be able to attend thereat, in which case his previous examination may also be read at the trial.

Penalty for
witnesses not
attending or
refusing to give
evidence.

14. If any person who shall have been duly summoned to attend as a witness shall, without sufficient excuse, neglect or refuse to attend, or attending shall refuse to give evidence or to answer any question which may be lawfully put to him, such person shall forfeit and pay such fine, not exceeding five hundred rupees, as the Judge of the said Court shall order; and such fine, if not paid, shall be levied by distress and sale of the goods and chattels of the person ordered to pay the same in the manner prescribed in section 9 of this Act.

Arrest.

15. (1) Whenever the Judge of the said Court thinks it necessary for obtaining evidence that any person should be arrested, he may issue a warrant for his arrest, and may, for the purpose of effecting the arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the ²[Central Government]) to enter any vessel.

(2) Any officer so authorized may, for the purpose of enforcing the entry, call to his aid any officer of Police or Customs, or any other persons, and may seize and detain the vessel for such time, as is reasonably necessary to affect the arrest; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section 186.

Act XLV
of 1860.

(3) No person shall be detained under this section for more than forty-eight hours.

¹Section 15 was inserted by the Calcutta Pilots (Amendment) Act, 1883 (VI of 1883). The original section was repealed by Act X of 1873.

²These words were substituted for the words "Governor General in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1859.]

(Secs. 16—18).

16. Upon the completion of the trial, the jurors **Verdict of** shall give their verdict upon the charge, or, if there **jurors.** be more than one, upon each separate charge.

The verdict shall be according to the opinion of the majority of jurors. If the jurors are equally divided, the Judge shall declare his opinion, and the verdict shall be according to the opinion of the Judge and the jurors with whom he concurs.

17. If by such verdict the accused person is found **Sentence if** guilty of the charge or of any one or more of the charges **accused found** preferred against him, the Judge of the Court shall **guilty.** sentence him to be dismissed from the said Pilot-service, or to have his license withdrawn, or shall award such other punishment, by loss of rank ¹* * or by change of a license from a higher to a lower grade, or suspension from employment for a specified period, as to the Judge shall appear fit.

The ²[Central Government], * * * may prepare **Preparation** a schedule of offences and punishments (such punishments **of schedule** being of the same nature as those hereinbefore **of offences** mentioned) for the guidance of the said Court; and, if **and** such schedule be prepared, ³* * and the charge proved **punishments** before the said Court is an offence specified in such schedule, the Judge of the said court shall award such punishment as is prescribed for such offence in the said schedule, and no other.

If by such verdict as aforesaid the accused person **Acquittal.** is found not guilty of the charge or charges preferred against him, the Judge shall declare him acquitted of the same.

18. The proceedings of the Court shall be sent by the Judge to the ⁵[Port Officer] for submission to the ²[Central Government]; and no sentence of punishment pronounced by the Judge of the said Court shall be final until it has been approved of by the ²[Central Government]. **No sentence**
final till
approved by
Central
Government.

¹The words "or pay" were omitted by s. 2 of the Calcutta Pilots (Amendment) Act, 1920 (Ben. Act IV of 1920).

²These words were substituted for the words "Governor General in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words "with the sanction of the Governor General in Council" were omitted by the Decentralization Act, 1914 (IV of 1914).

⁴The words "and sanctioned" were omitted, *ibid.*

⁵These words were substituted for the words "Superintendent of Marine" by the Amending Act, 1903 (1 of 1903).

[Act XII of 1859.]

(Secs. 19—23).

Central Government may remit sentence or mitigate punishment.

The ¹[Central Government] may remit the whole or any part of such sentence, or may direct the substitution of any mitigated punishment in lieu of the punishment awarded by the said Court as ²[it] shall think fit.

If verdict of jurors be manifestly contrary to evidence or trial otherwise insufficient.

19. If it shall appear to the Judge of the said Court that the verdict of the jurors is manifestly contrary to the evidence, or that the trial is otherwise insufficient, the Judge, instead of passing sentence on the accused person or declaring him acquitted, as the case may be, may certify the same to the ¹[Central Government], and the ¹[Central Government], may either order a new trial before another jury or acquit the accused person, as ²[it], shall think fit.

Power to make rules.

20. It shall be lawful for the ¹[Central Government] to make such rules as ²[it] shall think proper, not inconsistent with the provisions of this Act, for conducting the proceedings and regulating the practice of the said Court.

Marine authorities or Government may pass orders upon charge of breach of duty where trial unnecessary.

21. Nothing contained in this Act shall be held to restrict the marine authorities of the Government from passing such orders as may be deemed proper upon any charge of breach of duty preferred against any person employed in the said Pilot-service, when it shall not be deemed necessary that such person should be brought to trial for such breach of duty under the provisions of this Act.

Withdrawal of license from licensed pilot.

22. If any person licensed to act as a pilot when duly charged with breach of duty as aforesaid shall refuse to submit himself to trial under the provisions of this Act the license of such person shall be withdrawn and he shall be incapable of being again licensed to act as a pilot at the said Presidency.

Act applicable to persons in Pilot-service and to licensed pilots.

23. The provisions of this Act shall extend to all persons employed in the Pilot-service at the said Presidency and borne on the rolls of the Government establishment, whether such persons receive fixed salaries, or are remunerated by a portion of the pilotage charged on the vessels piloted by them, or in any other manner, and to all persons licensed to act as pilots at the said Presidency.

¹These words were substituted for the words "Governor General in Council" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²This word was substituted for the word "he" by paragraph 5(2), *ibid.*

Act XIX of 1867.

[The Darjeeling (High Court's Jurisdiction) Act,
1867.]¹

(8th March 1867.)

An Act to make further provision for the Administration of justice in the District of Darjeeling.

Whereas it is expedient to make further provision Preamble.
for the administration of justice in the District of
Darjeeling; It is hereby enacted as follows:—

1. [*Repeal of Act X of 1863.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

2. The High Court of Judicature for the Bengal Division of the Presidency of Fort William shall have and exercise, with regard to the District of Darjeeling, all such jurisdiction and powers as it has and exercises with regard to any other territory.

High Court,
Fort William,
to exercise
jurisdiction
over
Darjeeling.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903).

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Gazette of India, 1867, p. 33, and for Proceedings in Council, see *ibid*, 1867, Supplement, pp. 1, 41, 162 and 219.

LOCAL EXTENT.—This Act extends only to the District of Darjeeling.

Act VII of 1870.

(The Court-fees Act, 1870.)

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Act VII of 1870.

(The Court-fees Act, 1870.)¹

(11th March 1870.)

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Court-fees Act, Short title.
1870.

It extends to the whole of British India; Extent of Act.

And it shall come into force on the first day of Commencement
April, 1870. of Act.

1A. In this Act “the Appropriate Government” Definition
means, in relation to fees or stamps relating to docu- of “Appro-
ments presented or to be presented before any officer priate
serving under the Central Government, that Govern- Govern-
ment, and in relation to any other fees or stamps, the ment”.
Provincial Government.

2. In this Act, unless there is anything repug- Definitions.
nant in the subject or context,—

(1) “appeal” includes a cross-objection;

(2) “Chief Controlling Revenue-authority” means
the Board of Revenue;

(3) “Collector” includes any officer not below the
rank of sub-deputy collector appointed by
the Collector to perform the functions of a
Collector under this Act;

(4) “suit” includes an appeal from a decree ex-
cept in section 8A.

¹For the Statement of Objects and Reasons, see Gazette of India, 1869, Pt. V, p. 57 and for Proceedings in Council, see *ibid*, 1869, Supplement, pp. 1179 and 1452; *ibid*, 1870, Supplement, pp. 52, 378, 421, 427 and 434.

Act VII of 1870 has been declared in force in the Chittagong Hill-tracts, by notification under s. 4(2) of the Chittagong Hill-tracts Regulation, 1900 (I of 1900), see notification No. 5702 Ex., dated the 11th April, 1927, *Calcutta Gazette*, 1927, Pt. I, p. 844.

²Section 1A was inserted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

³Section 2 was substituted for the original section by s. 3 of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

(Chapter II.—Fees payable in Courts and in Public
Offices.—Secs. 3, 4.)

CHAPTER II.

¹FEEs PAYABLE IN COURTS AND IN PUBLIC OFFICES.

Levy of fees
in High Courts
on their original
sides.

3. The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by ²[section 15 of the Indian High Courts Act, 1861, or section 107 of the Government of India Act, 1915], ³[or section 229 of the Government of India Act, 1935],

or chargeable in each of such Courts under No. 11 of the first, and Nos. 7, 12, 14, ⁴*20 and 21 of the second schedule to this Act annexed;

Levy of fees in
Presidency
Small Cause
Courts.

and the fees for the time being chargeable in the Courts of Small Causes at the Presidency towns, and their several offices,

shall be collected in manner hereinafter appearing.

Fees on
documents
filed, etc., in
High Courts in
their extra-
ordinary
jurisdiction :

4. No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction;

or in the exercise of its extraordinary original criminal jurisdiction;

in their
appeallate
jurisdiction :

or in the exercise of its jurisdiction as regards appeals from the ⁵[judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) of one] or more Judges of the said Court, or of a Division Court;

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;

¹This heading was substituted for the original heading "Fees in the High Courts and in the Courts of Small Causes at the Presidency-towns" by s. 4, of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act, VII of 1935).

²These words and figures were substituted for the words and figures "Statutes 24 and 25 of Victoria Chapter 104, section 15," by the Repealing and Amending Act, 1917 (XXIV of 1917).

³These words and figures were inserted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The figure "16" which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

⁵These words and brackets were substituted for the words "judgment of two" by s. 2 of the Court-fees (Amendment) Act, 1922 (XIX of 1922).

of 1870].

(Chapter II.—Fees payable in Courts and in Public Offices.—Secs. 5, 6.)

or in the exercise of its jurisdiction as a Court of reference or revision;

as Courts of reference and revision.

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing-officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

Procedure in case of difference as to necessity or amount of fee.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the first Judge of such Court.

The Chief Justice shall declare who shall be taxing-officer within the meaning of the first paragraph of this section.

¹6. ¹[(1)] Except in the Courts hereinbefore mentioned no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there ²[has been paid] a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

Fees on documents filed, etc., in Mufassil Courts or in public offices.

³(2) Notwithstanding anything contained in sub-section (1) or in any other Act, a Court may receive a plaint or memorandum of appeal in respect of which an

¹Section 6 was transferred from Chapter III and inserted after section 5 in Chapter II and was renumbered as sub-section (1) of section 6 by s. 6(1) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act. VII of 1935).

²These words were substituted for the words "be paid", *ibid.*

³Sub-section (2) was added by s. 6(2), *ibid.*

(Act VII

(Chapter II.—Fees payable in Courts and in Public
Offices—Chapter III.—Computation of Fees.—
Sec. 7.)

insufficient fee has been paid, ¹[subject to the condition that the plaint or memorandum of appeal shall be rejected unless the plaintiff or appellant, as the case may be, pays to the Court within a time to be fixed by the Court such reasonable sum on account of court-fees as the Court may direct.]

CHAPTER III.

²COMPUTATION OF FEES.

Computation
of fees payable
in certain
suits

for money ;

for maintenance
and annuities ;

for movable
property
having a
market-value ;

for movable
property of
no market-
value ;

7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

- i. In suits for money (including suits for damages or compensation, or arrears of maintenance, or annuities, or of other sums payable periodically)—according to the amount claimed:
- ii. In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year:

³Provided that, in suits by widows, for maintenance such value shall be deemed to be the amount claimed to be payable for one year.

- iii. In suits for movable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plant:

- iv. In suits—

(a) for movable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

¹These words were substituted for the original words by s. 2 of the Court-fees (Bengal Third Amendment) Act, 1935 (Ben. Act I of 1936).

²This heading was substituted for the original heading "Fees in other Courts and in Public offices" by s. 5 of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

³This proviso was added by s. 2 of the Ajmer-Marwara Court-fees (Amendment) Act, 1930 (XXXI of 1930). It applies to Ajmer-Marwara only.

of 1870.]

(Chapter III.—Computation of Fees.—Sec. 7.)

(b) [omitted by s. 7 (1) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).]

- (c) to obtain a declaratory decree or order, where consequential relief is prayed, for a declaratory decree and consequential relief ;
- (d) to obtain an injunction, for an injunction ;
- (e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and for easements ;
- (f) for accounts— for accounts ;

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal ¹[subject to the provisions of section 8C.]

In all such suits the plaintiff shall state the amount at which he values the relief sought * * * :

³v. In suits for the possession of land, buildings or gardens— for possession of land, buildings or gardens ;

- (a) according to the value of the subject-matter, and such value shall be deemed to be fifteen times the nett profits which have arisen from the land, building or garden during the year next before the date of presenting the plaint, or if the Court sees reason to think that such profits have been wrongly estimated, fifteen times such amount as the Court may assess as such profits or according to the market-value of the land, building or garden.

whichever is lower ;

- (b) if, in the opinion of the Court, such profits are not readily ascertainable or assessable, or where there are no such profits, according to the market-value of the land, building or garden :

Explanation.—In this paragraph “building” includes a house, out-house, stable, privy, urinal, shed, hut, wall and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever :

¹These words were inserted by s. 7 (2) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

²The words “and the provisions of the Code of Civil Procedure, section thirty-one, shall apply as if for the word ‘claim’ the words ‘relief sought’ were substituted” which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³Paragraph V was substituted for the original paragraph by s. 7 (3) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

(Chapter III.—Computation of Fees.—Sec. 7.)

to enforce a
right of
pre-emption ;

- ¹vi. In suits to enforce a right of pre-emption—according to the market-value of the land, building or garden in respect of which the right is claimed :

Explanation.—In this paragraph “building” has the same meaning as in paragraph v :

for partition
and separate
of a share of
joint family
property, etc. ;

- ²viA. In suits for partition and separate possession of a share of joint family property or of a joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property—

if the plaintiff has been excluded from possession of the property of which he claims to be a co-parcener or co-owner, according to the market-value of the share in respect of which the suit is instituted :

for interest
of assignee
of land-

- vii. In suits for the interest of an assignee of land revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint :

to set aside an
attachment ;

- viii. In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached :

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest :

to redeem ;

- ix. In suits against a mortgagee for the recovery of the property mortgaged,

to foreclose ;

and in suits by a mortgagee to foreclose the mortgage,

or, where the mortgage is made by conditional sale, to have the sale declared absolute—according to the principal money expressed to be secured by the instrument of mortgage :

for specific
performance ;

- x. In suits for specific performance—

(a) of a contract of sale—according to the amount of the consideration :

(b) of a contract of mortgage—according to the amount agreed to be secured :

¹Paragraph vi was substituted for the original paragraph by s. 7 (4) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

²Paragraph viA was inserted by s. 7 (5), *ibid*.

of 1870.]

(Chapter III.—Computation of Fees.—Secs. 8, 8A.)

- (c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term:
- (d) of an award—according to the amount or value of the property in dispute:
- xi. In the following suits between landlord and tenant:—
 - (a) for the delivery by a tenant of the counterpart of a lease,
 - (b) to enhance the rent of a tenant having a right of occupancy,
 - (c) for the delivery by a landlord of a lease,
 - ¹(cc) for the recovery of immoveable property from a tenant including a tenant holding over after the determination of a tenancy,
 - (d) to contest a notice of ejectment,
 - (e) to recover the occupancy of ²[immoveable property] from which a tenant has been illegally ejected by the landlord, and
 - (f) for abatement of rent—

between
landlord
and tenant.

according to the amount of the rent of the ²[immoveable property] to which the suit refers, payable for the year next before the date of presenting the plaint.

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

Fee on
memorandum of
appeal
against order
relating to
compensation.

³8A. In every suit in which an *ad valorem* court-fee is payable under this Act on the plaint, the plaintiff shall file with the plaint a statement of particulars of the subject-matter of the suit and his own valuation thereof unless such particulars and the valuation are contained in the plaint. The statement shall be in such

Statement of
particulars
of subject-matter
of suits and
plaintiff's
valuation
thereof.

¹Clause (cc) was inserted by s. 2 (1) of the Court-fees (Amendment) Act, 1905 (VI of 1905).

²These words were substituted for the word "land" by s. 2 (2), *ibid.*

³Sections 8A, 8B, 8C, 8D, 8E and 8F were inserted by s. 8 of the Court fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

(Chapter III.—Computation of Fees.—Secs. 8B, 8C.)

form and shall contain such particulars as may be prescribed by the ¹[Provincial Government] by notification in the ²[*Official Gazette*]. In every such suit the plaintiff shall also, if the Court so directs, file a duplicate copy of the plaint and of the said statement.

Procedure where
insufficient
court-fee is
filed on plaint
or memorandum
of appeal.

³**8B.** (1) In every suit in which a court-fee is payable under this Act on the plaint or memorandum of appeal the Court shall, ⁴[on the date fixed for the appearance of the opposite party or as soon as may be thereafter], and in every case before proceeding to deliver judgment, record a finding whether a sufficient court-fee has been paid.

(2) If the Court records a finding that an insufficient court-fee has been paid on the plaint or memorandum of appeal the Court shall—

- (a) stay all further proceedings in the suit until it has determined the proper amount of such court-fee payable and the plaintiff or the appellant, as the case may be, has paid such amount or until the date referred to in clause (b), as the case may be:

Provided that if the plaintiff or appellant gives, within such time as the Court may allow, security, to the satisfaction of the Court, for the payment of any additional amount for which he may be found liable the Court may proceed with the suit,

- (b) fix a date before which the plaintiff or appellant shall pay the amount of court-fee due from him, as determined by the Court under clause (a).

(3) If the plaintiff or appellant fails to give the security referred to in clause (a) of sub-section (2) or to pay the amount referred to in clause (b) of that sub-section within the time allowed, or before the date fixed, by the Court, as the case may be, the suit shall be dismissed.

Inquiry as
to valuation
of suits.

⁵**8C.** If the Court is of opinion that the subject-matter of any suit has been wrongly valued it may revise

¹These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "*Calcutta Gazette*", *ibid.*

³See foot-note 3, on p. 467, *ante*.

⁴These words were substituted for the words "as soon as may be after the registration of the plaint or memorandum of appeal" by s. 3 of the Court-fees (Bengal Third Amendment) Act, 1935 (Ben. Act, I of 1936).

of 1870.]

(Chapter III.—Computation of Fees.—Secs. 8D—8F.)

the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose.

8D. (1) For the purpose of an inquiry under section 8C the Court may depute, or issue a commission to, any suitable person to make such local or other investigation as may be necessary and to report thereon to the Court. Such report and any evidence recorded by such person shall be evidence in the inquiry.

Investigation to ascertain proper valuation.

(2) The Court may, from time to time, direct such party to the suit as it thinks fit to deposit such sum as the Court thinks reasonable as the costs of the inquiry, and if the costs are not deposited within such time as the Court shall fix, may, notwithstanding anything contained in any other Act, dismiss the suit if such party is the plaintiff or the appellant and, in any other case, may recover the costs as a public demand.

8E. (1) The Court, when making an inquiry under section 8C and any person making an investigation under section 8D shall have, respectively, for the purposes of such inquiry or investigation, the powers vested in a Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

Power of persons making inquiry under sections 8C and 8D.

Act V of 1908.

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents or material objects; and
- (c) issuing commissions for the examination of witnesses.

(2) An inquiry or investigation referred to in subsection (1) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

Act XLV of 1860.

8F. If in the result of an inquiry under section 8C the Court finds that the subject-matter of the suit has been undervalued the Court may order the party responsible for the undervaluation to pay all or any part of the costs of the inquiry.

Costs of inquiry as to valuation and refund of excess fee.

If in the result of such inquiry the Court finds that the subject-matter of the suit has not been undervalued the Court may, in its discretion, order that all or any part of such costs shall be paid ²[by the Provincial Government] or by any party to the suit at whose

¹See foot-note 3, on p. 467, *ante*.

²These words were substituted for the words "by Government" by the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935), as adapted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter III.—Computation of Fees.—Secs. 9—12.)

instance the inquiry has been undertaken, and if any amount exceeding the proper amount of fee has been paid shall refund the excess amount so paid.

9. [*Power to ascertain nett profits or market-value.*] Rep. by s. 9 of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

10. [*Procedure where nett profits or market-value wrongly estimated.*] Rep. by s. 9 of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

Procedure
in suits for
mesne profits or
accounts when
amount found
due exceeds
amount claimed.

11. Where, in any suit for mesne profits or for land and mesne profits or for an account, the fee which would have been payable if the suit had comprised the whole of the relief to which the Court finds the plaintiff to be entitled exceeds the fee actually paid, the Court shall require the plaintiff to pay an additional fee equal to the amount of the excess, and if such additional fee is not paid within such time as the Court may fix, the suit, or if a decree has previously been passed therein, so much of the claim as has not been so decreed, shall be dismissed:

Provided that, where the additional fee is payable in respect of a portion of the claim which can be relinquished, that portion only shall be dismissed.

Decision of
questions as
to valuation.

12. i. Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

ii. But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided,² [and thereafter:—

(a) if the party required to pay is the appellant or petitioner, the provisions of sub-sections (2) and (3) of section 8B shall, so far as may be, apply;

¹Section 11 was substituted for the original section by s. 10 of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

²These words were substituted for the words "and the provisions of section 10, paragraph ii, shall apply" by s. 11, *ibid*.

of 1870.]

(Chapter III.—Computation of Fees.—Secs. 13—15.)

- (b) if the party required to pay is the respondent or the opposite party, the provisions of sub-section (2) of section 8B shall, so far as may be, apply, and, if such party fails to pay the fee required before the date fixed by the Court, the Court shall recover the amount of such fee from him as a public demand:

Explanation.—For the purposes of this section a question relating to the classification of any suit for the purpose of section 7 shall not be deemed to be a question relating to valuation.]

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in section 351² of the same Code for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Refund of fee paid on memorandum of appeal.

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

14. Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

Refund of fee on application for review of judgment.

15. Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the

Refund where Court reverses or modifies its former decision on ground of mistake.

¹See now Act V of 1908.

²This reference to the Code of Civil Procedure, Act VIII of 1859, should now be read as applying to the corresponding provision of Act V of 1908.

(Chapter III.—Computation of Fees.—Secs. 16—18.)

fee paid on the ¹[application] as exceeds the fee payable on any other application to such Court under the second schedule to this Act, No. 1, clause (b) or clause (d).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

16. [*Additional fee where respondent takes objection to unappealed part of decree.*] Rep. by Act V of 1908.

Multifarious
suits.

17. (1) In any suit in which two or more separate and distinct causes of action are joined and separate and distinct reliefs are sought in respect of each, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees with which the plaints or memoranda of appeal would be chargeable under this Act in separate suits instituted in respect of each such cause of action :

Provided that nothing in this sub-section shall be deemed to affect any power conferred by or under the Code of Civil Procedure, 1908, to order separate trials.

Act V of
1908.

(2) Where more reliefs than one based on the same cause of action are sought either jointly or in the alternative, the fee shall be paid according to the value of the relief in respect of which the largest fee is payable.

Written ex-
aminations
of complainants.

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police-officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the ²Code of Criminal Procedure, the complainant shall pay '[a fee of one rupee] unless the Court thinks fit to remit such payment.

¹This word was substituted for the words "plaint or memorandum of appeal," by s. 1 of the Court-fees (Amendment) Act, 1870 (XX of 1870).

²Section 17 was substituted for the original section by s. 12 of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

³This reference should now be read as referring to the Code of Criminal Procedure, 1898 (Act V of 1898)—see s. 3 of that Act.

⁴These words were substituted for the words "a fee of eight annas" by s. 3 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

of 1870.]

(Chapter III.—*Computation of Fees.*—Sec. 19.)

19. Nothing contained in this Act shall render the following documents chargeable with any fee:—

Exemption of
certain
documents.

- i. Power-of-attorney ¹[or other written authority] to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer or private of Her Majesty's army not in civil employment.
- ii. [*Rep. by the Amending Act 1891 (XII of 1891).*]
- iii. Written statements called for by the Court after the first hearing of a suit.
- iv. [*Rep. by the Cantonments Act, 1889 (XIII of 1889).*]
- v. Plaints in suits tried by Village Munsifs in the Presidency of Fort St. George.
- vi. Plaints and processes in suits before District Panchayats in the same Presidency.
- vii. Plaints in suits before Collectors under Madras Regulation XII of 1816.
- viii. Probate of a will, letters of administration, ²[and, save as regards debts and securities, a certificate under Bombay Regulation VIII of 1827], where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed ³[two thousand rupees].
- ix. Application or petition to a Collector or other officer making a settlement of land-revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interest therein, if presented previous to the final confirmation of such settlement.
- x. Application relating to a supply for irrigation of water belonging to Government.

¹These words were inserted by s. 13 (a) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

²These words were substituted for the words and figure "and certificate mentioned in the First Schedule to this Act Annexed No. 12," by s. 13 (2) of the Succession Certificate Act, 1889 (VII of 1889).

³These words were substituted for the words "one thousand rupees" by s. 4 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

(Chapter III.—Computation of Fees.—Sec. 19.)

- xi. Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.
- xii. Application for service of notice of relinquishment of land or of enhancement of rent.
- xiii. Written authority to an agent to distrain.
- xiv. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.
- xv. Bail bonds in criminal cases, recognizances to prosecute or give evidence and recognizances for personal appearance or otherwise.
- xvi. Petition, application, charge or information respecting any offence when presented, made or laid to or before a Police-Officer, or to or before the Heads of Villages or the Village Police in the territories respectively subject to the ¹[Provincial Governments] of Madras and Bombay.
- xvii. Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.
- xviii. Complaint of a public servant (as defined in the Indian Penal Code), a municipal officer or an officer or servant of Railway Company.
- xix. Application for permission to cut timber in Government forests, or otherwise relating to such forests.
- xx. Application for the payment of money due by Government to the applicant.
- xxi. Petition of appeal against the chaukidari assessment under Act No. XX of 1856, or against any municipal tax.
- xxii. Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.

Act XLV
of 1860.

¹These words were substituted for the words "Governors in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1870.]

(Chapter III.—Computation of Fees.—Chapter IIIA.—
Probates, Letters of Administration and Certi-
ficates of Administration.—Sec. 19A.)

XV of
1872.

xxiii. Petitions presented to the Special Commis-
sioner appointed under Bengal Act No. II
of 1869 (to ascertain, regulate and record
certain tenures in Chota Nagpur).

¹xxiv. Petitions under the Indian Christian Marriage
Act, 1872, sections 45 and 48.

²xxv. Petitions of appeal ³[by servants of the Crown
or] a Court of Wards against orders of dis-
missal, reduction or suspension; copies of
such orders filed with such appeals, and
applications for obtaining such copies.

CHAPTER IIIA.

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFI- CATES OF ADMINISTRATION.

19A. Where any person on applying for the pro-
bate of a will or letters of administration has estimated
the property of the deceased to be of greater value than
the same has afterwards proved to be, and has conse-
quently paid too high a court-fee thereon, if, within
six months after the true value of the property has
been ascertained, such person produces the probate or
letters to the Chief Controlling Revenue-authority ⁴[for
the local area] in which the probate or letters has or
have been granted,

Relief where
too high a
court-fee has
been paid.

and delivers to such Authority a particular inventory
and valuation of the property of the deceased, verified
by affidavit or affirmation,

and if such authority is satisfied that a greater fee
was paid on the probate or letters than the law required,

¹Paragraph XXIV was substituted for the original clause by s. 2
of the Indian Christian Marriage Act, 1872 (XV of 1872).

²Paragraph XXV was added by s. 13 (b) of the Court-fees (Bengal
Amendment) Act, 1935 (Ben. Act VII of 1935).

³These words were substituted for the words "by Government
servants or servants of" by the Court-fees (Bengal Amendment) Act,
1935 (Ben. Act VII of 1935), as adapted by Sch. IV of the Govern-
ment of India (Adaptation of Indian Laws) Order, 1937.

⁴Chapter IIIA was inserted by s. 6 of the Probate and Administra-
tion Act, 1875 (XIII of 1875).

⁵These words were substituted for the words "of the Province" by
s. 3 (1) of the Court-fees (Amendment) Act, 1901 (X of 1901).

[Act VI]

(Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration.—Secs. 19B, 19C.)

the said Authority may—

- (a) cancel the stamp on the probate or letters if such stamp has not been already cancelled;
- (b) substitute another stamp for denoting the court-fee which should have been paid thereon; and
- (c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

Relief where debts due from a deceased person have been paid out of his estate.

19B. Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

Relief in case of several grants.

19C. Whenever ^{1*} a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the

¹The word "such" which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

of 1870.]

(Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration.—Secs. 19D, 19E.)

amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

19D. The probate of the will or the letters of administration of the effects of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any moveable or immoveable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

Probates declared valid as to trust-property though not covered by CO¹² 6-fee.

19E. Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court-fee thereon, the Chief Controlling Revenue-authority ¹[for the local area] in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters:

Provision for case where too low a court-fee has been paid on probates, etc.

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty,

¹These words were substituted for the words "of the Province" by s. 3 (I) of the Court-fees (Amendment) Act, 1901 (X of 1901).

(Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration.—Secs. 19F—19H.)

and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

Administrator to give proper security before letters stamped under section 19E.

19F. In case of letters of administration on which too low a court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

Executors, etc., not paying full court-fee on probates, etc., within six months after discovery of under-payment.

19G. Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months * * * * after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees *per cent.* on the amount of the sum wanting to make up the proper court-fee.

Notice of applications for probate or letters of administration to be given to Revenue-authorities, and procedure thereon.

19H. (1) Where an application for probate or letters of administration is made to any Court other than a High Court, the Court shall cause notice of the application to be given to the Collector.

(2) Where such an application as aforesaid is made to a High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue-authority ³[for the local area in which the High Court is situated].

(3) The Collector within the local limits of whose revenue-jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause

¹The words and figure "after the first day of April, 1875 or" were repealed by the Amending Act, 1891 (XII of 1891).

²Sections 19H, 19-I, 19J and 19K were inserted by s. 2 of the Court-fees Amendment Act, 1899 (XI of 1899).

³These words were substituted for the words "of the Province" by s. 3 (2) of the Court-fees (Amendment) Act, 1901 (X of 1901).

of 1870.]

(Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration.—Sec. 19H.)

to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by section 277 of the Indian Succession Act, 1865¹, or, as the case may be, by section 98 of the the Probate and Administration Act, 1881¹. X of 1865.
V of 1881.

(5) The Court, when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any such inquiry, the Court or person authorized by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property. The person authorized as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under subsection (5) shall be final, but shall not bar the entertainment and disposal by the Chief Controlling Revenue authority of any application under section 19E.

¹See now, the Indian Succession Act, 1925 (XXXIX of 1925).

(Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration.—Chapter IV.—Process-fees.—Secs. 19-1—20.)

(8) The ¹[Provincial Government] may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

Payment of court-fees in respect of probates and letters of administration.

¹19-1. (1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19H, sub-section (4).

Recovery of penalties, etc.

¹19J. (1) Any excess fee found to be payable on an inquiry held under section 19H, sub-section (6), and any penalty or forfeiture under section 19G, may, on the certificate of the Chief Controlling Revenue-authority, be recovered from the executor or administrator as if it were an arrear of land-revenue by any Collector in any part of British India.

(2) The Chief Controlling Revenue-authority may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under section 19E or of any court-fee under section 19E in excess of the full court-fee which ought to have been paid.

Sections 6 and 28 not to apply to probates or letters of administration.

¹19K. Nothing in section 6 or section 28 shall apply to probates or letters of administration.

CHAPTER IV.

PROCESS-FEES.

Rules as to costs of processes.

20. The High Court shall, as soon as may be, make rules as to the following matters:—

1. The fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil and Revenue Courts established within the local limits of such jurisdiction;

¹See foot-note 1, on p. 468, *ante*.

²See foot-note 2, on p. 478, *ante*.

of 1870.]

(Chapter IV.—Process-fees.—Secs. 21, 22.)

ii. the fees chargeable for serving and executing processes issued by the criminal Courts established within such limits in the case of offences other than offences for which police-officers may arrest without a warrant; and

iii. the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may from time to time alter and add to the rules so made.

All such rules, alterations and additions shall, after being confirmed by the ¹[Provincial Government] ²* * * be published in the ³[Official Gazette], and shall thereupon have the force of law.

Confirmation and publication of rules.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

21. A table in the English and Vernacular languages, showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

Tables of process-fees.

22. Subject to rules to be made by the High Court and approved by the ¹[Provincial Government] * * * every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto,

Number of peons in District and subordinate Courts.

and for the purposes of this section, every Court of Small Causes established under Act No. XI of 1865⁵ (to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature) shall be deemed to be subordinate to the Court of the District Judge.

Number of peons in Mofussil Small Cause Courts.

¹See foot-note 1, on p. 468, *ante*.

²The words "and sanctioned by the Governor-General of India in Council" were omitted by s. 2 and the First Schedule of the Devolution Act, 1920 (XXXVIII of 1920).

³These words were substituted for the words "local official Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The words "and the Governor General of India in Council" were omitted by s. 2 and the 1st Sch. of the Devolution Act, 1920 (XXXVIII of 1920).

⁵The reference to Act XI of 1865 should now be read as to the Provincial Small Cause Courts Act, 1887 (IX of 1887), ss. 2 (2) and (3).

(Chapter IV.—Process-fees.—Chapter V.—Of the Mode of Levying Fees.—Secs. 23—27.)

Number of
peons in
Revenue
Courts.

23. Subject to rules to be framed by the Chief Controlling Revenue-authority and approved by the ¹[Provincial Government] ²* * * every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

24. [Process served under this chapter to be held to be process within meaning of Code of Civil Procedure.] Rep. by the Amending Act, 1891 (XII of 1891).

CHAPTER V.

OF THE MODE OF LEVYING FEES.

Collection
of fees by
stamps.
Stamps to be
impressed
or adhesive.

25. All fees referred to in section 3 or chargeable under this Act shall be collected by stamps.

26. The stamps used to denote any fees chargeable under this Act shall be impressed or adhesive or partly impressed and partly adhesive, as the ³[Appropriate Government] may, by notification in the ⁴[Official Gazette] from time to time direct.

Rules for
supply,
number, renewal
and keeping
accounts of
stamps.

27. The ³[Appropriate Government] may, from time to time, make rules for regulating—

- (a) the supply of stamps to be used under this Act,
- (b) the number of stamps to be used for denoting any fee chargeable under this Act,
- (c) the renewal of damaged or spoiled stamps, and
- (d) the keeping accounts of all stamps used under this Act:

Provided that, in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the ⁴[Official Gazette], and shall thereupon have the force of law.

¹See foot-note 1 on p. 468, *ante*.

²The words "and the Governor General of India in Council" were omitted by the Devolution Act, 1920 (XXXVIII of 1920).

³These words were substituted for the words "Local Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴See foot-note 3, on p. 481, *ante*.

of 1870).

(Chapter V.—Of the Mode of Levying Fees.—Chapter VI.—Miscellaneous.—Secs. 28—33.)

28. No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

Stamping documents inadvertently received.

But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

29. Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

Amended document.

30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Cancellation of stamp.

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

CHAPTER VI.

MISCELLANEOUS.

31. [*Repayment of fees paid on applications to Criminal Courts.*] Rep. by s. 163 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

32. [*Amendment of Act VIII of 1859 and Act IX of 1869.*] Rep. by the Amending Act, 1891 (XII of 1891).

33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section 4 or section 6 shall be deemed to prohibit such filing or exhibition.

Admission in criminal cases of documents for which proper fee has not been paid.

(Chapter VI.—Miscellaneous.—Secs. 34—36.)

Sale of
stamps.

¹34. (1) The ²[Appropriate Government] may from time to time make rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

(2) All such rules shall be published in the ³[*Official Gazette*], and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Enlargement of
time.

⁴34A. Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Act, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

Power to
suspend,
reduce or
remit fees.

⁵35. (1) The ²[Appropriate Government] may, from time to time subject to such conditions or restrictions as it may think fit to impose, by notification in the ⁶[*Official Gazette*], suspend the payment of or reduce or remit, in the whole of Bengal or in any part thereof, all or any of the fees mentioned in the first and second schedules to this Act annexed and may in like manner cancel or vary such order.

(2) The ²[Appropriate Government] may, from time to time by rules, prescribe the manner in which any fee the payment of which is suspended under sub-section (1) may be realised and for this purpose direct that such fee may be recovered as a public demand.

Saving of fees
to certain
officers of
High Courts.

36. Nothing in Chapters II and V of this Act applies to the commission payable to the Accountant-General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

¹This section was substituted for the original section by the Amending Act, 1891 (XII of 1891).

²See foot-note 3, on p. 482 *ante*.

³See foot-note 3, on p. 481, *ante*.

⁴Section 34A was inserted by s. 14 of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

⁵Section 35 was substituted for the original section by s. 15, *ibid*.

⁶These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1870.]

(Schedule I.)

SCHEDULE I.

Ad valorem fees.

Number.		Proper Fee.
11. †Plaint written statement ¹ pleading ² a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed seventy-five rupees, for every five rupees, or part thereof of such amount ³ [or value],	Six annas.
	and	
	when such amount or value exceeds seventy-five rupees for every five rupees or part thereof, in excess of seventy-five rupees, up to one hundred-rupees,	Eight annas.
	and	
	when such amount or value exceeds one hundred rupees, for every ten rupees or, part thereof, in excess of one hundred rupees, up to one hundred and fifty rupees,	One rupee ten annas.
	[]	
	when such amount or value exceeds one hundred and fifty rupees, for every ten rupees, or part thereof, up to one thousand rupees,	One rupee two annas.
	and	

¹This article was substituted for the original article by s. 5 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

†To ascertain the proper fee leviable on the institution of a suit, see the table annexed to this schedule.

²The commas before and after the word "pleading" which were repealed by the Bengal Court-fees (Amendment No. II) Act, 1922 (Ben. Act VI of 1922), are omitted.

³The words "or value" were substituted for the words "in value" by s. 2 *ibid*.

⁴The word "and" was repealed by s. 2, *ibid*.

(Schedule 1.)

SCHEDULE I—*contd.**Ad valorem fees—contd.*

Number.		Proper Fee.
11. †Plaint, etc.— <i>contd.</i>	when such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to seven thousand five hundred rupees,	Seven rupees eight annas.
	and	
	when such amount or value exceeds seven thousand five hundred rupees, for every two hundred and fifty rupees, or part thereof, in excess of seven thousand five hundred rupees, up to ten thousand rupees,	Fifteen rupees.
	and	
	when such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees,	Twenty-two rupees eight annas.
	and	
	when such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to fifty thousand rupees,	Thirty rupees.
	and	

¹See foot-note ¹ on p. 485, *ante*.

†To ascertain the proper fee leviable on the institution of a suit, see the table annexed to this schedule.

of 1870.]

(Schedule I.)

SCHEDULE I—*contd.*

Ad valorem fees—contd.

Number.		Proper Fee.
1. †Plaint, etc.— <i>concl'd.</i>	<p>when such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees :</p> <p>Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees.</p>	Thirty-seven rupees eight annas.
2. Plaint * * * in a suit for possession under [the Specific Relief Act, 1877, section 9].	..	A fee of one-half the amount prescribed in the foregoing scale.
3. [Rep. by Act VIII of 1871.)]	..	
4. Application for review of judgment, if presented on or after the ninetieth day from the date of the decree.	..	The fee leviable on the plaint or memorandum of appeal.
5. Application for review of judgment, if presented before the ninetieth day from the date of the decree.	..	One-half of the fee leviable on the plaint or memorandum of appeal.

¹See footnote ¹ on p. 485, *ante*.

†To ascertain the proper fee leviable on the institution of a suit, see the table annexed to this schedule.

*The words "or memorandum of appeal" which were repealed by the Court-fees Act (1870) Amendment Act, 1870 (XX of 1870), are omitted.

*These words were substituted for the words and figures "Act No. XIV of 1859 (*to provide for the limitation of suits*), section 15" by the Amending Act, 1891 (XII of 1891).

(Schedule I.)

SCHEDULE I—contd.

Ad valorem fees—contd.

Number.		Proper Fee.
6. Copy or translation of a judgment or order not being, or having the force of, a decree.	When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or Office, or by any other Judicial or Executive Authority—	
	(a).—If the amount or value of the subject-matter is fifty or less than fifty rupees.	¹ [Six annas.]
	(b).—If such amount or value exceeds fifty rupees.	¹ [Twelve annas.]
7. Copy of a decree or order having the force of a decree.	When such judgment or order is passed by a High Court.	¹ [One rupee eight annas.]
	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—	
	(a).—If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees.	Eight annas.
8. Copy of any document liable to stamp-duty under the Indian Stamp Act, ¹ [1899], when left by any party to a suit or proceeding in place of the original withdrawn.	(b).—If such amount or value exceeds fifty rupees.	One rupee.
	When such decree or order is made by a High Court.	Four rupees.
	(a).—When the stamp-duty chargeable on the original does not exceed eight annas.	The amount of the duty chargeable on the original.
	(b).—In any other case.	Eight annas.

II of 1899.

¹The words "Six annas," "Twelve annas" and "One rupee eight annas" were substituted for the words "Four annas," "Eight annas" and "One rupee", respectively, by s. 6 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

¹This figure was substituted for the figure "1879" by s. 3 of the Court-fees (Bengal Second Amendment) Act, 1935 (Ben. Act XI of 1935).

of 1870.]

(Schedule I.)

SCHEDULE I—contd.

Ad valorem fees—contd.

Number.		Proper Fee.
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or Office, or from the office of any chief officer charged with the executive administration of a Division.	For every three hundred and sixty words or fraction of three hundred and sixty words.	Eight annas.
10. [Rep. by the Guardians and Wards Act, 1890 (VIII of 1890).]		
11. Probate of a will or letters of administration with or without will annexed.	<p>²When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees ⁴[on such amount or value up to ten thousand rupees],</p> <p>and</p> <p>when such amount or value exceeds ten thousand rupees, ⁵ * * * ⁶[on the portion] of such amount or value which is in excess of ten thousand rupees ⁷[up to fifty thousand rupees],</p> <p>and</p>	<p>Two per centum * * *</p> <p>Three per centum * * *.</p>

¹Articles 11, 12, and 12A were substituted for the original Articles 11 and 12, by s. 13(1) of the Succession Certificate Act, 1889 (VII of 1889). New Article 12 was substituted for Article 12 so substituted by s. 5(1) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

²The first four entries in the second and third columns of Article 11 were substituted for the old entries by s. 7 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

³The words "on such amount or value" which were repealed by s. 3 of the Bengal Court-fees (Amendment No. II) Act, 1922 (Ben. Act VI of 1922), are omitted.

⁴These words were substituted for the words "but does not exceed ten thousand rupees" by s. 3, *ibid.*

⁵The words "but does not exceed fifty thousand rupees" were repealed by s. 3, *ibid.*

⁶These words were substituted for the words "for the portion" by s. 3, *ibid.*

⁷These words were added by s. 3, *ibid.*

(Schedule I.)

SCHEDULE I—*contd.**Ad valorem fees—contd.*

Number.		Proper Fee.
11. Probate, etc.— <i>contd.</i>	<p>when such amount or value exceeds fifty thousand rupees, ¹* * * ²[on the portion] of such amount or value which is in excess of fifty thousand rupees ⁴[up to a lakh of rupees],</p> <p>and</p> <p>when such amount or value exceeds a lakh of rupees, ³[on the portion] of such amount or value which is in excess of a lakh of rupees ⁵[up to two lakhs and fifty thousand rupees].</p> <p>⁶[and</p> <p>when such amount or value exceeds two lakhs and fifty thousand rupees, on the portion of such amount or value which is in excess of two lakhs and fifty thousand rupees up to three lakhs of rupees,</p> <p>and</p> <p>when such amount or value exceeds three lakhs of rupees, on the portion of such amount or value which is in excess of three lakhs of rupees up to four lakhs of rupees,</p> <p>and</p>	<p>Four per centum * * *</p> <p>Five per centum * * *</p> <p>Five and a half per centum.</p> <p>Six per centum.</p>

¹The words "but does not exceed a lakh of rupees" which were repealed by s. 3 of the Bengal Court-fees (Amendment No. II) Act, 1922 (Ben. Act VI of 1922), are omitted.

²The words "on such amount or value" were repealed by s. 3, *ibid.*

³These words were substituted for the words "for the portion" by s. 3, *ibid.*

⁴These words were added by s. 3, *ibid.*

⁵These words were inserted by s. 4 (a) of the Court-fees (Bengal Second Amendment) Act, 1935 (Ben. Act XI of 1935).

⁶These words within square brackets in the second and third columns of Article 11, were inserted by s. 4(b), *ibid.*

of 1925.]

(Schedule I.)

SCHEDULE I—*contd.*

Ad valorem fees—contd.

Number.		Proper Fee.
11. Probate, etc.— <i>concl'd.</i>	<p>when such amount or value exceeds four lakhs of rupees, on the portion of such amount or value which is in excess of four lakhs of rupees up to five lakhs of rupees,</p> <p style="text-align: center;">and</p> <p>when such amount or value exceeds five lakhs of rupees, on the portion of such amount or value which is in excess of five lakhs of rupees :</p> <p>¹Provided that when, after the grant of certificate under ²[the Indian Succession Act, 1925] or under the Regulation of the Bombay Code, No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.</p>	<p>Six and a half per centum.</p> <p>Seven per centum.]</p>
³ 12. Certificate under the Indian Succession Act, 1925.	<p>When the amount or value of any debt or security specified in the certificate under section 374 of the Act exceeds one thousand rupees,</p> <p style="text-align: center;">and</p>	<p>Two per centum on the first ten thousand rupees, three per centum on the next forty thousand rupees, four per centum on the next fifty thousand rupees, and five per centum ⁴[on the next one lakh and fifty thousand rupees,</p>

XXXIX of
1925.

¹This proviso was part of the amendment made in this Article by s. 2 of the Court-fees (Amendment) Act, 1910 (VII of 1910).

²These words and figure were substituted for the words and figure "the Succession Certificate Act, 1889" by s. 4(c) of the Court-fees (Bengal Second Amendment) Act, 1935 (Ben. Act XI of 1935).

³This Article was substituted for the original Article by s. 5(1), *ibid.*

⁴These words within square brackets were inserted in this new article by s. 5(2)(a), *ibid.*

(Schedule I.)

SCHEDULE I—*contd.**Ad valorem fees—contd.*

Number		Proper Fee
	<p>when the aggregate amount or value of any debts or securities specified in the certificate and of any debts or securities to which the certificate has been extended under section 376 of the Act, exceeds one thousand rupees.</p>	<p>five and a half per centum on the next fifty thousand rupees, six per centum on the next one lakh of rupees, six and a half per centum on the next one lakh of rupees, and seven per centum] on the remainder of such amount or value.</p> <p>In respect of such portion of the aggregate amount or value as consists of the amount or value of debts or securities so specified, the fee hereinbefore provided in that behalf in this article and</p> <p>three per centum on such portion of the first ten thousand rupees,</p> <p>four and a half per centum on such portion of the next forty thousand rupees,</p> <p>six per centum on such portion of the next fifty thousand rupees, and</p> <p>seven and a half per centum ¹[on such portion of the next one lakh and fifty thousand rupees,</p> <p>eight and a quarter per centum on such portion of the next fifty thousand rupees,</p> <p>nine per centum on such portion of the next one lakh of rupees,</p> <p>nine and three-quarters per centum on such portion of the next one lakh of rupees, and</p> <p>ten and a half per centum] on such portion of the remainder of such aggregate amount or value as consists of the amount or value of debts or securities to which the certificate has been extended.</p> <p>Note.—(1) The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.</p>

¹These words within square brackets were inserted in this new Article by s. 5(2) (b) of the Court-fees (Bengal Second Amendment) Act, 1935 (Ben. Act XI of 1935),

of 1870.]

(Schedule I.)

SCHEDULE I—contd.

Ad valorem fees—contd.

Number.		Proper Fee.
		(2) Whether or not any power with respect to a security specified in a certificate has been conferred, under the Act and where such a power has been so conferred whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained
¹ 12A. Certificate under the Regulation of the Bombay Code, No. VIII 1827.	² [(1) As regards debts and securities. (2) As regards other property in respect of which the certificate is granted— When the amount or value of such property exceeds one thousand rupees, but does not exceed ten thousand rupees. When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees. When such amount or value exceeds fifty thousand rupees.	The same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889, or in respect of an extension of such a certificate, as the case may be. Two per centum on such amount or value. Two and one-half per centum on such amount or value. Three per centum on such amount or value.]
³ 13 * * *		
⁴ 14 * * *		
⁵ 15 * * *		

VII of 1889.

¹See foot-note 'on p. 489, ante.

²These words were substituted for the old entries in the second and the third columns of Art. 12A by s. 2 of the Court-fees (Amendment) Act, 1910 (VII of 1910).

³Article 13 has not been printed here as it does not apply to Bengal.

⁴Article 14 was omitted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵This article was repealed by the Repealing and Amending Act, 1923 (XI of 1923).

(Schedule I.)

SCHEDULE I.

¹Table of rates of *ad valorem* fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.	
Rs.	Rs.	Rs.	a.
..	5	0	6
5	10	0	12
10	15	1	2
15	20	1	8
20	25	1	14
25	30	2	4
30	35	2	10
35	40	3	0
40	45	3	6
45	50	3	12
50	55	4	2
55	60	4	8
60	65	4	14
65	70	5	4
70	75	5	10
75	80	6	2
80	85	6	10
85	90	7	2
90	95	7	10
95	100	8	2
100	110	9	12
110	120	11	6
120	130	13	0
130	140	14	10
140	150	16	4
150	160	18	0
160	170	19	2
170	180	20	4
180	190	21	6
190	200	22	8
200	210	23	10
210	220	24	12
220	230	25	14
230	240	27	0
240	250	28	2
250	260	29	4

¹This table of rates was substituted for the original table of rates by s. 9 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

of 1870.

(Schedule I.)

SCHEDULE I—contd.

Table of rates of ad valorem fees leviable on the institution of suits.—contd.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.	
Rs.	Rs.	Rs.	a.
260	270	30	6
270	280	31	8
280	290	32	10
290	300	33	12
300	310	34	14
310	320	36	0
320	330	37	2
330	340	38	4
340	350	39	6
350	360	40	8
360	370	41	10
370	380	42	12
380	390	43	14
390	400	45	0
400	410	46	2
410	420	47	4
420	430	48	6
430	440	49	8
440	450	50	10
450	460	51	12
460	470	52	14
470	480	54	0
480	490	55	2
490	500	56	4
500	510	57	6
510	520	58	8
520	530	59	10
530	540	60	12
540	550	61	14
550	560	63	0
560	570	64	2
570	580	65	4
580	590	66	6
590	600	67	8
600	610	68	10
610	620	69	12
620	630	70	14
630	640	72	0
640	650	73	2
650	660	74	4
660	670	75	6

(Schedule I.)

SCHEDULE I—*contd.*

Table of rates of ad valorem fees leviable on the institution of suits.—contd.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.	
Rs.	Rs.	Rs.	a.
670	680	76	8
680	690	77	10
690	700	78	12
700	710	79	14
710	720	81	0
720	730	82	2
730	740	83	4
740	750	84	6
750	760	85	8
760	770	86	10
770	780	87	12
780	790	88	14
790	800	90	0
800	810	91	2
810	820	92	4
820	830	93	6
830	840	94	8
840	850	95	10
850	860	96	12
860	870	97	14
870	880	99	0
880	890	100	2
890	900	101	4
900	910	102	6
910	920	103	8
920	930	104	10
930	940	105	12
940	950	106	14
950	960	108	0
960	970	109	2
970	980	110	4
980	990	111	6
990	1,000	112	8
1,000	1,100	120	0
1,100	1,200	127	8
1,200	1,300	135	0
1,300	1,400	142	8
1,400	1,500	150	0
1,500	1,600	157	8
1,600	1,700	165	0
1,700	1,800	172	8

of 1870.]

(Schedule I.)

SCHEDULE I—*contd.*

Table of rates of ad valorem fees leviable on the institution of suits.—contd.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.	
Rs.	Rs.	Rs.	a.
1,800	1,900	180	0
1,900	2,000	187	8
2,000	2,100	195	0
2,100	2,200	202	8
2,200	2,300	210	0
2,300	2,400	217	8
2,400	2,500	225	0
2,500	2,600	232	8
2,600	2,700	240	0
2,700	2,800	247	8
2,800	2,900	255	0
2,900	3,000	262	8
3,000	3,100	270	0
3,100	3,200	277	8
3,200	3,300	285	0
3,300	3,400	292	8
3,400	3,500	300	0
3,500	3,600	307	8
3,600	3,700	315	0
3,700	3,800	322	8
3,800	3,900	330	0
3,900	4,000	337	8
4,000	4,100	345	0
4,100	4,200	352	8
4,200	4,300	360	0
4,300	4,400	367	8
4,400	4,500	375	0
4,500	4,600	382	8
4,600	4,700	390	0
4,700	4,800	397	8
4,800	4,900	405	0
4,900	5,000	412	8
5,000	5,100	420	0
5,100	5,200	427	8
5,200	5,300	435	0
5,300	5,400	442	8
5,400	5,500	450	0
5,500	5,600	457	8
5,600	5,700	465	0
5,700	5,800	472	8
5,800	5,900	480	0

*(Schedule I.)*SCHEDULE I—*contd.*

Table of rates of ad valorem fees leviable on the institution of suits.—contd.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.	
Rs.	Rs.	Rs.	a.
5,900	6,000	487	8
6,000	6,100	495	0
6,100	6,200	502	8
6,200	6,300	510	0
6,300	6,400	517	8
6,400	6,500	525	0
6,500	6,600	532	8
6,600	6,700	540	0
6,700	6,800	547	8
6,800	6,900	555	0
6,900	7,000	562	8
7,000	7,100	570	0
7,100	7,200	577	8
7,200	7,300	585	0
7,300	7,400	592	8
7,400	7,500	600	0
7,500	7,750	615	0
7,750	8,000	630	0
8,000	8,250	645	0
8,250	8,500	660	0
8,500	8,750	675	0
8,750	9,000	690	0
9,000	9,250	705	0
9,250	9,500	720	0
9,500	9,750	735	0
9,750	10,000	750	0
10,000	10,500	772	8
10,500	11,000	795	0
11,000	11,500	817	8
11,500	12,000	840	0
12,000	12,500	862	8
12,500	13,000	885	0
13,000	13,500	907	8
13,500	14,000	930	0
14,000	14,500	952	8
14,500	15,000	975	0
15,000	15,500	997	8
15,500	16,000	1,020	0
16,000	16,500	1,042	8
16,500	17,000	1,065	0
17,000	17,500	1,087	8

of 1870.]

(Schedule I.)

SCHEDULE I—*contd.*

Table of rates of ad valorem fees leviable on the institution of suits.—contd.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee	
Rs.	Rs.	Rs.	a.
17,500	18,000	1,110	0
18,000	18,500	1,132	8
18,500	19,000	1,155	0
19,000	19,500	1,177	8
19,500	20,000	1,200	0
20,000	21,000	1,230	0
21,000	22,000	1,260	0
22,000	23,000	1,290	0
23,000	24,000	1,320	0
24,000	25,000	1,350	0
25,000	26,000	1,380	0
26,000	27,000	1,410	0
27,000	28,000	1,440	0
28,000	29,000	1,470	0
29,000	30,000	1,500	0
30,000	31,000	1,530	0
31,000	32,000	1,560	0
32,000	33,000	1,590	0
33,000	34,000	1,620	0
34,000	35,000	1,650	0
35,000	36,000	1,680	0
36,000	37,000	1,710	0
37,000	38,000	1,740	0
38,000	39,000	1,770	0
39,000	40,000	1,800	0
40,000	41,000	1,830	0
41,000	42,000	1,860	0
42,000	43,000	1,890	0
43,000	44,000	1,920	0
44,000	45,000	1,950	0
45,000	46,000	1,980	0
46,000	47,000	2,010	0
47,000	48,000	2,040	0
48,000	49,000	2,070	0
49,000	50,000	2,100	0
50,000	55,000	2,137	8
55,000	60,000	2,175	0
60,000	65,000	2,212	8
65,000	70,000	2,250	0
70,000	75,000	2,287	8
75,000	80,000	2,325	0

(Schedule I.)

SCHEDULE I—*concl'd.*

Table of rates of ad valorem fees leviable on the institution of suits.—concl'd.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee	
Rs.	Rs.	Rs.	a.
80,000	85,000	2,362	8
85,000	90,000	2,400	0
90,000	95,000	2,437	8
95,000	1,00,000	2,475	0
1,00,000	1,05,000	2,512	8
1,05,000	1,10,000	2,550	0
1,10,000	1,15,000	2,587	8
1,15,000	1,20,000	2,625	0
1,20,000	1,25,000	2,662	8
1,25,000	1,30,000	2,700	0
1,30,000	1,35,000	2,737	8
1,35,000	1,40,000	2,775	0
1,40,000	1,45,000	2,812	8
1,45,000	1,50,000	2,850	0
1,50,000	1,55,000	2,887	8
1,55,000	1,60,000	2,925	0
1,60,000	1,65,000	2,962	8
1,65,000	1,70,000	3,000	0
1,70,000	1,75,000	3,037	8
1,75,000	1,80,000	3,075	0
1,80,000	1,85,000	3,112	8
1,85,000	1,90,000	3,150	0
1,90,000	1,95,000	3,187	8
1,95,000	2,00,000	3,225	0
2,00,000	2,05,000	3,262	8

and the fee increases at the rate of thirty-seven rupees eight annas for every five thousand rupees, or part thereof, up to a maximum fee of ten thousand rupees, for example—

Rs.	Rs.	a.
3,00,000	4,012	8
4,00,000	4,762	8
5,00,000	5,512	8
6,00,000	6,262	8
7,00,000	7,012	8
8,00,000	7,762	8
9,00,000	8,512	8
10,00,000	9,262	8
11,00,000	10,000	0

of 1870.]

(Schedule II.)

SCHEDULE II.

Fixed fees.

Number.		Proper Fee.
1—Application or petition.	<p>(a)—When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings ;</p> <p>or when presented to any officer of land-revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement ;</p> <p>or when presented to any municipal Commissioner¹[or member of a District Board] under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement :</p>	<p>¹[Two annas.]</p>

¹These words were substituted for the words "one anna" by s. 10 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

²These words were inserted by s. 10, *ibid*.

(Schedule II.)

SCHEDULE II—*contd.**Fixed fees—contd.*

Number.		Proper Fee.
1.—Application or petition— <i>contd.</i>	<p>or when presented to any Civil Court other than a principal Civil Court of original jurisdiction, ¹* * * or to any Court of Small Causes constituted under Act, ²No. XI of 1865 or under Act ³No. XVI of 1868, section 20, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees ;</p> <p>or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or Office.</p> <p>(b).—When containing a complaint or charge of any offence other than an offence for which police-officers may, under the ⁵Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court ; -</p>	<p>[Two annas.]</p> <p>[In the case of a complaint or charge of an offence presented to a Criminal Court one rupee, and in other cases twelve annas.]</p>

¹The words "or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III of 1859" which were repealed by the Cantonments Act, 1889 (XIII of 1889), are omitted.

²See now the Provincial Small Cause Courts Act, 1887 (IX of 1887), by which Act XI of 1865 was repealed.

³See now s. 25 of the Bengal, Agra and Assam Civil Courts Act, 1887 (XII of 1887).

⁴See foot-note 1 on p. 501, *ante*.

⁵See now the Code of Criminal Procedure, 1898 (Act V of 1898).

⁶These words were substituted for the words "Eight annas" by s. 10 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

of 1870.]

(Schedule II.)
SCHEDULE II—*contd.*
Fixed fees—contd.

Number.		Proper Fee.
1. Application or petition— <i>contd.</i>	<p>or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue-officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act;</p> <p>or to deposit in Court revenue or rent;</p> <p>or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.</p> <p>(c) When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive Authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division and not otherwise provided for by this Act.</p> <p>¹[(d)(i) When presented to the High Court under section 115 of the Code of Civil Procedure, 1908, for revision of an order—</p> <p>(a) when the value of the suit to which the order relates does not exceed Rs. 1,000;</p>	<p>²[In the case of a complaint or charge of an offence presented to a Criminal Court one rupee, and in other cases twelve annas;</p> <p>³[One rupee eight annas.]</p> <p>Act V of 1908.</p> <p>Five rupees.</p>

¹These words, figures, letters, and brackets were substituted for the old clause (d) and the entries opposite thereto by s. 11 of the Bengal Court-fees (Amendment) Act 1922 (Ben. Act IV of 1922).

²These words were substituted for the words "Eight annas" by s. 10 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

³These words were substituted for the words "One rupee" by s. 10, *ibid.*

(Schedule II.)

SCHEDULE II—*contd.**Fixed fees—contd.*

Number.		Proper Fee.
1.—Application or petition— <i>contd.</i>	(b) when the value of the suit exceeds Rs. 1,000.	Ten rupees.
	(ii) When presented to the High Court otherwise than under that section.	Two rupees.]
¹ [1A. Application to any Civil Court that records may be called for from another Court.	When the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	Twelve annas in addition to any fee levied on the application under clause (a), clause (b), or clause (d) of article 1 of this schedule.]
2. Application for leave to sue as a pauper.	....	Eight annas.
3. Application for leave to appeal as a pauper.	(a) When presented to a District Court.	One rupee.
	(b) When presented to a Commissioner or a High Court.	Two rupees.
4. Complaint or memorandum of appeal in a suit to obtain possession under Act No. XVI of 1838, or ² [the 'Mamlatdars' Courts Act, 1876].	....	Eight annas.
5. Complaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.		

¹Article 1A was inserted by s. 2 of the Court-fees (Amendment) Act, 1911 (XIV of 1911).

²These words and figures were substituted for the words, figures and letters "Bombay Act No. V of 1864" (to give Mamlatdars' Courts jurisdiction in certain cases to maintain existing possession or to restore possession to any party dispossessed otherwise than by course of law), by the Amending Act, 1891 (XII of 1891).

³See now the Bombay Mamlatdars' Courts Act, 1906 (Bom. Act II of 1906).

of 1870.]

(Schedule II.)

SCHEDULE II—contd.

Fixed fees—contd.

Number.		Proper Fee.	
3. ¹ [Bail bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898, or the Code of Civil Procedure, 1908, and not otherwise provided for by this Act.]	....	Eight annas.	Act V of 1898. Act V of 1908.
7. Undertaking under section 49 of the Indian Divorce Act.			IV of 1869.
8. [Rep. by the Amending Act 1891 (XII of 1891.)]			
9. [Rep. by Act XII of 1891.]			
10. Mukhtarnama or Wakalatnama.	When presented for the conduct of any one case— (a)—to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (b) and (c) of this number,	² [One repee.]	

¹These words and figures were substituted for the original words by the Second Repealing and Amending Act, 1914 (XVII of 1914)

²These words were substituted for the words "Eight annas" by s. 12 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

(Schedule II.)

SCHEDULE II—*contd.**Fixed fees—contd.*

Number.		Proper Fee.
10. Mukhtarnama or Waklatnama— <i>concl'd.</i>	(b)—to a Commissioner of Revenue, Circuit or Customs or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority,	¹ [One rupee eight annas.]
	(c)—to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority.	Two rupees.
*[11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented—	(a) (i) to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority,	Eight annas.
	(ii) to any Civil Court other than a High Court,	One rupee.
	(b) to a Chief Controlling Executive or Revenue Authority,	Two rupees.
	(c) to a High Court	Five rupees.]
12. Caveat ..	....	² [Ten rupees.]
13. Application under Act ⁴ No. X of 1859, section 26, or ⁵ Bengal Act No. VI of 1862, section 9, or ⁶ Bengal Act No. VIII of 1869, section 37.	....	Five rupees.

¹These words were substituted for the words "One rupee" by s. 12 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

²This article was substituted for original article 11 by s. 13, *ibid.*

³These words were substituted for the words "Five rupees" by s. 14, *ibid.*

⁴Act X of 1859 was repealed by the Bengal Tenancy Act, 1885 (VIII of 1885), in those portions of the Lower Provinces to which that Act extends.

⁵Bengal Act VI of 1862 was repealed by the Bengal Tenancy Act, 1885 (VIII of 1885), so far as it affected those portions of the Lower Provinces to which that Act extends.

⁶Bengal Act VIII of 1869 was repealed by the Bengal Tenancy Act, 1885 (VIII of 1885).

of 1870.]

(Schedule II.)

SCHEDULE II—*contd.*

Fixed fees—contd.

Number.		Proper Fee.	
14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866.	}	Five rupees.
15. [Rep. Act V of 1908.]			
16. [Rep. Act VI of 1889, s. 18 (1).]			
17. Complaint or memorandum of appeal in each of the following suits :—			
i. to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court:		¹ [Fifteen rupees.]
ii. to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates :		¹ [Fifteen rupees.]
iii. to obtain a declaratory decree where no consequential relief is prayed :		¹ [Twenty rupees.]
iv. to set aside an award :		¹ [Fifteen rupees.]

XXI of 1866.

¹These words were substituted for the words "Ten rupees" by s. 15 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

²These words were substituted for the words "Ten rupees" by s. 15, *ibid.*

(Schedule II.)

SCHEDULE II—contd.

Fixed fees—contd.

Number.		Proper Fee.
17. Complaint or memorandum, etc.—concl'd.		
v. to set aside an adoption :	....	¹ [Twenty rupees.]
² [vA. for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property if the plaintiff is in possession of the property of which he claims to be a coparcener or co-owner :	....	Fifteen rupees.]
vi. every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act.	....	³ [Fifteen rupees.]
18. Application under ⁴ [paragraph 17 of the Second Schedule to the Code of Civil Procedure, 1908.]	....	Ten rupees.

Act V
of 1908.¹See foot-note 2 on p. 507, *ante*.²This entry was inserted by s. 16(1) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).³See foot-note 1 on p. 507, *ante*.⁴These words and figures were substituted for the words and figure, "section 326 of the Code of Civil Procedure" by s. 6 of the Court-fees (Bengal Second Amendment) Act, 1935 (Ben. Act XI of 1935).

of 1870.]

(Schedule II.)

SCHEDULE II—contd.

Fixed fees—contd.

Number.		Proper Fee.	
¹ [18A. Application under paragraph 20 of the Second Schedule to the Civil Procedure Code, 1908, to file an arbitration award, and memorandum of appeal from a decree passed under paragraph 21 of the said schedule.	....	Fifteen rupees.]	Act V of 1908.
² [19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908.]	....	Ten rupees.	
20. Every petition under the Indian Divorce Act, except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act.	}		IV of 1869.
		....	Twenty rupees.
21. Complaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865.	}		XV of 1865.
³ [22. Petition. (a) questioning the election of any person as a Municipal Commissioner, when	....	Fifteen rupees.]	

¹This article was inserted by s. 16 (2) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

²Substituted by s. 155 (4th Sch.) of the Code of Civil Procedure, 1908 (Act V of 1908), for the original entry which was as follows :—" 19-Agreement under section 328 of the same Code."

³This article was inserted by s. 16 (3) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

(Schedules II, III.)

SCHEDULE II—concl'd.

Fixed fees—concl'd.

	Number.	Proper Fee.
Ben. Act XV of 1932.	presented to a District Judge under sec- tion 36 of the Bengal Muni- cipal Act, 1932 ;	
	(b) questioning the election of any person as a member of -	

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Ben. Act
III of
1885.

In the first column of clause (b) of Article 22 of Schedule II, *for* the words, letter and figures “to any authority appointed under clause (a) of section 138” *substitute* the words, figures and letter “to a District Judge under section 18B”.

[Substituted by Ben. Act III of 1941, section 8(2).]

[No. 13, dated the 24th June 1941.]

¹SCHEDULE III.

(See section 19-I.)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS, IF ANY, AS MAY
BE NECESSARY).

IN THE COURT OF

*Re Probate of the Will of
the property and credits of*

*, (or administration of
) , deceased.*

{ Solemnly affirm
make oath }

and say that I am the executor (or one of the executors or one of the next of kin) of , deceased, and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the abovenamed deceased died possessed or was entitled to at the time of his death, and which have come, or are likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such lastmentioned items, but inclusive of all rents, interests, dividends and increased values since the date of the death of the said deceased, are under the value of .

¹Sch. III was inserted by s. 3 of the Court-fees Amendment Act, 1899 (XI of 1899). The original Schedule III was repealed by Act XIV of 1870.

of 1870.]

(Schedule III.)

SCHEDULE III—contd.

ANNEXURE A.

VALUATION OF THE MOVEABLE AND IMMOVEABLE PROPERTY OF DECEASED.	Rs.	a.	p.
Cash in the house and at the banks, household goods, wearing-apparel, books, plate, jewels, etc.			
(State estimated value according to best of Executor's or Administrator's belief.)			
Property in Government securities transferable at the Public Debt Office.			
(State description and value at the price of the day; also the interest separately, calculating it to the time of making the application.)			
Immoveable property consisting of			
(State description giving, in the case of houses, the assessed value, if any, and the number of years' assessment the market-value is estimated at, and, in the case of land, the area, the market-value and all rents that have accrued.)			
Leasehold property			
(If the deceased held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application.)			
Property in public companies			
(State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application.)			
Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes and other securities for money.			
(State the amount of the whole; also the interest separately, calculating it to the time of making the application.)			
Book debts			
(Other than bad.)			
Stock in trade			
(State the estimated value, if any.)			
Other property not comprised under the foregoing heads.			
(State the estimated value, if any.)			
Total ..			
Deduct amount shown in Annexure B not subject to duty.			
Net Total ..			

(Schedule III.)

SCHEDULE III—concl'd.

ANNEXURE B.

SCHEDULE OF DEBTS, ETC.

	Rs.	a.	P.
Amount of debts due and owing from the deceased payable by law out of the estate.			
Amount of funeral expenses			
Amount of mortgage incumbrances			
Property held in trust not beneficially or with general power to confer a beneficial interest.			
Other property not subject to duty			
Total ..			

Act IV of 1871.

(THE CORONERS ACT, 1871.)

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SECOND SCHEDULE.—FORM OF INQUISITION.

Act IV of 1871.

(The Coroners Act, 1871.)¹

(27th January 1871.)

An Act to consolidate and amend the laws relating to Coroners.

Whereas it is expedient to consolidate and amend the laws relating to Coroners in the Presidency-towns; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Coroners Act, 1871. Short title.
[Local Extent.] Rep. by the Coroners Act, 1881
(X of 1881).

[Commencement.] Rep. by the Repealing Act, 1874
(XVI of 1874).

2. [Repeal of enactments.] Rep. by the Repealing Act, 1873 (XII of 1873).

CHAPTER II.

APPOINTMENT OF CORONERS.

3. Within the local limits of the ordinary original civil jurisdiction of each of the High Courts of Judicature at Fort William [*and Bombay*] there shall be a Coroner. Coroners of Calcutta [*and Bombay*].

Such Coroners shall be called [*respectively*] the Coroner of Calcutta [*and the Coroner of Bombay*].

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Gazette of India*, 1870, Pt. V, p. 295; for preliminary Report of the Select Committee, see *ibid*, p. 351; and for proceedings in Council, see *ibid*, 1870, Supplement, pp. 1077, 1195, 1298; *ibid*, 1871, Supplement, pp. 198, 207.

LOCAL EXTENT.—This Act extends to Calcutta—see s. 3.

²Section 3 was substituted for the original s. 3 by s. 2 of the Coroners (Madras) Act, 1889 (V of 1889).

(Chapter II.—Appointment of Coroners.—Chapter III.
Duties and Powers of Coroners.—Secs. 4—9.)

Their
appointment,
suspension and
removal.

4. Every such officer shall be appointed and may be suspended or removed by the ¹[Provincial Government].

Coroners to
be public
servants.

5. Every Coroner shall be deemed a public servant within the meaning of the Indian Penal Code.

Act XLV
of 1860.

Power to hold
other offices.

6. Any Coroner may hold simultaneously any other office under Government.

7. [Oath to be taken by Coroner.] Rep. by the Indian Oaths Act, 1873 (X of 1873).

CHAPTER III.

DUTIES AND POWERS OF CORONERS.

Jurisdiction
to inquire
into deaths.

8. When a Coroner ³[has reason to believe] that the death of any person has been caused by accident, homicide, suicide, or suddenly by means unknown, or that any person being a prisoner has died in prison,

and that the body is lying within the place for which the Coroner is so appointed,

the Coroner shall inquire into the cause of death.

Every such inquiry shall be deemed a judicial proceeding within the meaning of section 193 of the Indian Penal Code.

Act XLV
of 1860.

Coroner to be
sent for when
prisoner dies.

9. Whenever a prisoner dies in a prison situate within the place for which a Coroner is so appointed, the Superintendent of the prison shall send for the Coroner before the body is ⁴[disposed of].

Any Superintendent failing herein shall, on conviction before a Magistrate, be punished with fine not exceeding five hundred rupees.

Nothing in the former part of this section applies to cases in which the death has been caused by cholera or other epidemic disease.

¹These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words "Every person now holding such office shall be deemed to have been appointed under this Act" which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³These words were substituted for the words "is informed" by s. 5 of the Coroners Act, 1881 (X of 1881).

⁴These words were substituted for the word "buried" by s. 2 of the Coroners (Amendment) Act, 1908 (IV of 1908).

of 1871.]

(Chapter III.—Duties and Powers of Coroners.—Secs. 10—16.)

10. Whenever an inquest ought to be holden on any body lying dead within the local limits of the jurisdiction of any Coroner, he shall hold such inquest, whether or not the cause of death arose within his jurisdiction.

Power to hold inquests on bodies within local limits wherever cause of death occurred.

11. A Coroner may order a body to be disinterred within a reasonable time after the death of the deceased person, either for the purpose of taking an original inquisition where none has been taken, or a further inquisition ¹[where the Coroner considers it necessary or desirable in the interests of justice to take a further inquisition].

Power to order body to be disinterred.

12. On receiving notice of any death mentioned in section 8, the Coroner shall summon five, seven, nine, eleven, thirteen or fifteen respectable persons to appear before him at a time and place to be specified in the summons, for the purpose of inquiring when, how and by what means the deceased came by his death.

Summoning jury.

Any inquest under this Act may be held on a Sunday.

Inquest may be on Sunday.

13. When the time arrives, the Coroner shall proceed to the place so specified, open the Court by proclamation, and call over the names of the jurors.

Opening Court.

14. When a sufficient jury is in attendance, he shall administer an oath to each juror to give a true verdict according to the evidence, and shall then proceed with the jury to view the body.

Jurors to be sworn.

15. The Coroner and the jury shall view and examine the body at the first sitting of the inquest, and the Coroner shall make such observations to the jury as the appearance of the body requires:

View of body.

²Provided that the Coroner may, with the concurrence of a majority of the jury, dispense with a view of the body, if he is satisfied, from medical evidence or medical certificates, that no advantage would result from such viewing.

16. The Coroner shall then make proclamation for the attendance of witnesses, or, where the inquiry is conducted in secret, shall call in separately such as know anything concerning the death.

Proclamation for witnesses.

¹These words were substituted for the words "where the first was insufficient" by s. 3 of the Coroners (Amendment) Act, 1908 (IV of 1908).

²This proviso was added, *ibid*.

(Chapter III.—Duties and Powers of Coroners.—Secs. 17—19.)

Subsisting
witnesses.

17. ¹[It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses; the Coroner shall inquire of such circumstances and the cause of death, and, if before or during the inquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

Any person disobeying such summons shall be deemed to have committed an offence under section 174, section 175 or section 176 of the Indian Penal Code, as the case may be.]

Act. XLV
of 1860.

For the purpose of causing prisoners to be brought up to give evidence, the Coroner shall be deemed a Criminal Court within the meaning of ²[Part IX of the Prisoners Act, 1900].

Act III
of 1900.

Post-mortem
examination.

18. The Coroner may direct the performance of a *post-mortem* examination, with or without an analysis of the contents of the stomach or intestines, by any medical witness summoned to attend the inquest; and every medical witness, other than the Chemical Examiner to Government, shall be entitled to such reasonable remuneration as the Coroner thinks fit.

Fees to
medical
witnesses.

Report of
Chemical
Examiner.

³18A. Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Act, may be used as evidence in any inquest under this Act and in any subsequent inquiry, trial or other proceeding under the Code of Criminal Procedure, 1898.

Act V of
1898.

Evidence to be
on oath.
Evidence on
behalf of
accused.

19. All evidence given under this Act shall be on oath, and the Coroner shall be bound to receive evidence on behalf of the party (if any) accused of causing the death of the deceased person.

Interpreter.

Witnesses unacquainted with the English language shall be examined through the medium of an interpreter, who shall be sworn to interpret truly as well the oath as the questions put to, and the answers given by, the witnesses.

¹These words and figures were substituted for the original words by s. 6 of the Coroners Act, 1881 (X of 1881).

²These words and figures were substituted for the words and figures "Act No. XV of 1869 (to provide facilities for obtaining the evidence and appearance of prisoners and for service of process upon them)" by s. 5 of the Coroners (Amendment) Act, 1908 (IV of 1908).

³Section 18A was inserted by s. 6, *ibid*.

of 1871.]

(Chapter III.—Duties and Powers of Coroners.—
Secs. 20—24.)

After each witness has been examined, the Coroner shall inquire whether the jury wish any further questions to be put to the witness, and, if the jury wish that any such questions should be put, the Coroner shall put them accordingly.

Questions suggested by jury.

20. The Coroner shall commit to writing the material parts of the evidence given to the jury, and shall read or cause to be read over such parts to the witness and then procure his signature thereto.

Coroner to take down evidence in writing.

Any witness refusing so to sign shall be deemed to have committed an offence under section 180 of the Indian Penal Code.

Witnesses to sign depositions.

Act XLV
of 1860.

Every such deposition shall be subscribed by the Coroner.

Coroner to subscribe depositions.

I of 1872

¹[For the purposes of section 26 of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate.]

Coroner a Magistrate.

21. The Coroner may adjourn the inquest from time to time, and from place to place.

Adjournment of inquest.

Whenever the inquest is adjourned the Coroner shall take the recognizances of the jurors to attend at the time and place appointed, and notify to the witnesses when and where the inquest will be proceeded with.

Jurors' recognizances.

The amount of such recognizances shall in each case be fixed by the Coroner, ²[and the whole, or such part thereof as to the Coroner seems fit, shall, in default of attendance by the jurors, be recoverable in the same manner as a fine imposed under section 31].

22. When all the witnesses have been examined, the Coroner shall sum up the evidence to the jury, and the jury shall then consider of their verdict.

Coroner to sum up to jury.

23. When the verdict is delivered the Coroner shall draw up the inquisition according to the finding of the jury, or, when the jury is not unanimous, according to the opinion of the majority.

Coroner to draw up inquisition.

24. Every inquisition under this Act, shall be signed by the Coroner with his name and style of office and by the jurors, and shall set forth—

Contents of inquisition.

(1) where, when and before whom the inquisition is holden,

(2) who the deceased is,

¹These words were added by s. 7 of the Coroners Act, 1881 (X of 1881).

²These words were added by s. 7 of the Coroners (Amendment) Act, 1908 (IV of 1908).

(Chapter III.—Duties and Powers of Coroners.—
Secs. 25—29.)

- (3) where his body lies,
- (4) the names of the jurors, and that they present the inquisition upon oath,
- (5) where, when and by what means the deceased came by his death, and
- (6) if his death was occasioned by the criminal act of another, who is guilty thereof.

If the name of the deceased be unknown, he may be described as a certain person to the jurors unknown.

Every such inquisition shall be in the form set forth in the Second Schedule hereto annexed, with such variation as the circumstances of each case require.

Procedure where death is found due to an act amounting to an offence.

¹25. When the jury or majority of the jury find that the death of the deceased person was occasioned by an act which amounts to an offence under any law in force in British India, the Coroner shall immediately after the inquest forward a copy of the inquisition, together with the names and addresses of the witnesses, to the Commissioner of Police.

Power to arrest and commit for trial.

²26. The Coroner may also, where the verdict justifies him in so doing, issue his warrant for the apprehension of the person who is found to have caused the death of the deceased person, and send him forthwith to a Magistrate empowered to commit him for trial.

27. [*Power to accept bail.*] *Rep. by s. 10 of the Coroners (Amendment) Act, 1908 (IV of 1908).*

Warrant for disposal of the body.

28. When the proceedings are closed, or before, if it be necessary to adjourn the inquest, the Coroner shall give his warrant for the ³[disposal] of the body on which the inquest has been taken.

Inquisitions not to be quashed for want of form.
Amendment of inquisition.

29. No inquisition found upon or by any inquest shall be quashed for any technical defect.

In any case of technical defect, a Judge of the High Court may, if he thinks fit, order the inquisition to be amended, and the same shall forthwith be amended accordingly.

¹Section 25 was substituted for the original section 25 by s. 8 of the Coroners (Amendment) Act, 1908 (IV of 1908).

²Section 26 was substituted for the original section 26 by s. 9, *ibid.*

³This word was substituted for the word "burial" by s. 11, *ibid.*

of 1871.]

(Chapter III.—Duties and Powers of Coroners.—Chapter IV.—Coroners' Juries.—Secs. 30—35.)

30. It shall no longer be the duty of the Coroner to inquire whether any person dying by his own act was or was not *felo de se*, to inquire of treasure-trove or wrecks, to seize any fugitive's goods, to execute process or to exercise as Coroner any jurisdiction not expressly conferred by this Act.

Cessation of jurisdiction as to treasure-trove, wrecks, etc.

A *felo de se* shall not forfeit his goods.

Felo de se.

Deodands are hereby abolished.

Deodands.

CHAPTER IV.

CORONERS' JURIES.

31. Whenever any person has been duly summoned to appear as a juror by a Coroner, and fails or neglects to attend at the time and place specified in the summons, the Coroner may cause him to be openly called in his Court three times to appear and serve as a juror; and upon the non-appearance of such person, and proof that such summons has been served upon him, or left at his usual place of abode, may impose such fine upon the defaulter, not exceeding fifty rupees, as to the Coroner seems fit.

Fine on juror neglecting to attend.

32. The Coroner shall make out and sign a certificate, containing the name and surname, the residence and trade or calling of every person so making default, together with the amount of the fine so imposed, and the cause of such fine,

Certificate as to defaulting juror.

and shall send such certificate to one of the Magistrates of the place of which he is the Coroner,

and shall cause a copy of such certificate to be served upon the person so fined, by having it left at his usual place of residence, or by sending the same through the Post Office, addressed as aforesaid and registered.

Service of copy of certificate.

33. Thereupon such Magistrate shall cause the fine to be levied in the same manner as if it had been imposed by himself.

Levy of fine.

34. Unless in case of necessity, no person who has appeared, or has been summoned to appear, as a juror on an inquest, and has not made default, shall, within one year after such appearance or summons, be summoned to appear as a juror under this Act.

Jurors not to be summoned twice within the year.

35. When an inquest is held on the body of a prisoner dying within a prison, no officer of the prison and no prisoner confined therein shall be a juror on such inquest.

Jurors on inquest on prisoner.

*(Chapter V.—Rights and Liabilities of Coroners.—
Secs. 36—41.)*

CHAPTER V.

RIGHTS AND LIABILITIES OF CORONERS.

Coroner's
salary.

36. Every Coroner shall be entitled to such salary for the performance of the duty of his office as is prescribed in that behalf by the ¹[Provincial Government].

Disbursements
to be repaid.

37. All disbursements duly made by a Coroner for fees to medical witnesses, hire of rooms for the jury and the like, shall be repaid to him by the ¹[Provincial Government].

Power to
appoint
deputy.

38. Every Coroner may, from time to time, with the previous sanction of the ¹[Provincial Government], appoint, by writing under his hand, a proper person to act for him as his deputy in the holding of inquests
* * *

All inquests taken and other acts done by any such deputy, under or by virtue of any such appointment, shall be deemed to be the acts of the Coroner appointing him :

Provided that no such deputy shall act for any such Coroner except during the illness of the said Coroner, or during his absence for any lawful and reasonable cause.

Revocation of
appointment.

Every such appointment may at any time be cancelled and revoked by the Coroner by whom it was made.

Exemption
from serving
on juries.

39. No Coroner or Deputy Coroner shall be liable to serve as a juror.

Privilege
from arrest.

40. Coroners and Deputy Coroners shall be privileged from arrest while engaged in the discharge of their official duty.

Penalty for
failure to
comply with
Act.

41. Any Coroner or Deputy Coroner failing to comply with the provisions of this Act, or otherwise misconducting himself in the execution of his office, shall be liable to such fine as the Chief Justice of the High Court, upon summary examination and proof of the failure or misconduct, thinks fit to impose.

¹These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words "and such deputy shall take and subscribe, before one of the Judges of the High Court, an oath that he will faithfully discharge the duties of his office" which were repealed by the Indian Oaths, Act, 1873 (X of 1873), are omitted.

of 1871.]

(Chapter V.—Rights and Liabilities of Coroners.—
Seco. 42. Schedules.)

42. No proceeding for anything done under this Act, or for any failure to comply with its provisions, shall be commenced or prosecuted ^{Limitation of suits.} * * * after tender of sufficient amends.

FIRST SCHEDULE.

(Enactments repealed.)

Rep. by the Repealing Act, 1873 (XII of 1873).

SECOND SCHEDULE.

FORM OF INQUISITION.

AN INQUISITION taken at _____ on the _____ day of 187____, before *E F*, Coroner of _____, [in the case of *A B*, deceased], upon the oath of *G H*, *I J*, *K L*, and *M N* then and there duly sworn and charged to inquire when, how and by what means the said *A B* came to his death.

We, the said jurors, find unanimously (or by a majority of _____) that the death of the said *A B* was caused, on or about the _____ day of 187____, by (here state the cause of death as in the following examples)—

1. *Cases of homicide*—a blow on the head with a stick inflicted on him by *C D*, under such circumstances that the act of *C D* was justifiable [or accidental] homicide.
—a stab on the heart with a knife inflicted on him by *C D*, under such circumstances that the act of *C D* was culpable homicide not amounting to murder (or culpable homicide amounting to murder or a rash or negligent act not amounting to culpable homicide).
2. *Cases of accident*—falling out of a boat into the river Hooghly, whereby he was drowned.
—a kick from a horse which fractured his skull and ruptured blood-vessels in his head.
3. *Cases of suicide*—shooting himself through the head with a pistol—arsenic, which he voluntarily administered to himself.
4. *Cases of sudden death by means unknown*—disease of the heart.
—apoplexy.
—sunstroke.

And so say the jurors upon their oath aforesaid.

Witness our hands—*E F*, Coroner of _____

G H, *I J*, *K L*, *M N*, *O P* (*Jurors*).

¹The words "after the expiration of three months from such act or failure, nor," which were repealed by the Indian Limitation Act, 1871 (IX of 1871), are omitted.

²These words and letters were substituted for the words and letters "on view of the body of *A. B*, then and there lying dead" by s. 12 of the Coroners (Amendment) Act, 1908 (IV of 1908).

Act I of 1878.

(The Opium Act, 1878.)

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PREAMBLE.

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- Local extent.
- Commencement.
2. (*Repealed.*)
3. Interpretation.
4. Prohibition of poppy cultivation and possession, etc., of opium.
5. Power to make rules to permit such matters.
6. (*Repealed.*)
7. Warehousing opium.
8. Power to make rules relating to warehouses.
9. Penalty for illegal cultivation of poppy, etc.
- 9A. Import, export, transport, sale or possession by one person on account of another.
- 9B. Criminal liability of licensee for acts of servant.
- 9C. Penalty for certain acts by licensee or his servant.
- 9D. Penalty for possession of opium in respect of which an offence has been committed.
- 9E. Penalty for attempting or abetting offence.
- 9F. Penalty for attempting or abetting offence outside Bengal.
- 9G. Enhanced punishment after previous conviction.
10. Presumption in prosecutions under section 9.
11. Confiscation of opium.
12. Order of confiscation by whom to be made.
13. Power to make rules regarding disposal of things confiscated, and rewards.
14. Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.
15. Power to seize opium in open places.
Power to detain, search and arrest.
16. Searches how made.
17. Officers to assist each other.
18. Vexatious entries, searches, seizures and arrests.
19. Issue of warrants.
20. Power of Provincial Government to authorise officers to investigate offences and grant bail.
- 20A. Persons arrested how to be dealt with.
- 20B. Power of investigating officer to summon witnesses.
- 20C. Power of investigating officer to release accused when evidence deficient.
- 20D. Power of certain officers to summon suspected persons.
- 20E. Summoning of witnesses, etc., how to be made.
- 20F. Procedure in case of forfeiture of bond.

[Act I of 1878.]

- 20G. Jurisdiction of Magistrate on receipt of report from Excise Officer, etc.
- 20H. Attendance of witnesses before Magistrate.
- 20-I. Police to take charge of articles seized.
- 20J. Diary of proceedings in investigation.
- 21. Report of arrests and seizures.
- 22. (*Repealed.*)
- 23. Recovery of arrears of fees, duties, etc.
- 24. Farmer may apply to Collector or other officer to recover amount due to
by licensee.
- 25. Recovery of penalties due under bond.

SCHEDULE. (*Repealed.*)

Act I of 1878.

(The Opium Act, 1878.)¹

[9th January 1878.]

An Act to amend the law relating to Opium.

Whereas it is expedient to amend the law relating to opium; It is hereby enacted as follows:— Preamble.

1. This Act may be called the Opium Act, 1878. Short title.

It shall extend to such local areas² as the ³[Provincial Government] may, by notification in the ⁴[*Official Gazette*], from time to time direct; Local extent.

And it shall come into force in each of such areas on such day as the ⁵[Provincial Government] in like manner directs in this behalf. Commencement.

2. [*Repeal and amendment of enactments.*] *Rep. by the Amending Act, 1891 (XII of 1891), and the Amending Act, 1894 (IV of 1894).*

3. In this Act, unless there be something repugnant in the subject or context,— Interpretation.

⁵[“opium” means—

(i) the capsules of the poppy (*Papaver Somniferum* L.);

(ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and

¹For the Statement of Objects and Reasons, see *Gazette of India*, 1877, Pt. V, p. 645; for Proceedings in Council, see *ibid*, Supplement, pp. 3015 and 3030; *ibid*, 1878, pp. 53 and 80.

For the Statement of Objects and Reasons of the Opium (Bengal Amendment) Bill, 1932, see *Calcutta Gazette*, 1932, Pt. IV, pp. 1-3; for Report of the Select Committee, see *ibid*, 1933, Pt. IV, pp. 13-21; and for Proceedings in Council, see the Proceedings of the Bengal Legislative Council, Vol. XXXVIII, No. 1, pp. 365-367; *ibid*, Vol. XXXIX, No. 2, pp. 50-52; *ibid*, Vol. XLI, No. 2, pp. 37 and 38.

²It has been extended by notification in the *Gazette of India* to Bengal from 21st August, 1878, see *Gazette of India*, 1878, Pt. I, p. 526.

³These words were substituted for the words “Governor General in Council” by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words “*Gazette of India*” by paragraph 4(I), *ibid*.

⁵This definition was substituted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

[Act

(Sec. 4.)

(iii) any mixture, with or without neutral materials, of any of the above forms of opium,

but does not include any preparation containing not more than 0·2 *per cent.* of morphine, or a manufactured drug as defined in section 2 of the Dangerous Drugs Act, 1930;]

II of 1930.

“Magistrate” means, in the Presidency-towns, a Presidency Magistrate, and elsewhere, a Magistrate of the first class or (when specially empowered by the ¹[Provincial Government] to try cases under this Act) a Magistrate of the second class;

²[“import” means to import inter-provincially, as defined in clause (j) of section 2 of the Dangerous Drugs Act, 1930;

“export” means to export inter-provincially, as defined in clause (l) of section 2 of the Dangerous Drugs Act, 1930; and]

“transport” means to remove from one place to another within the territories administered by the same ¹[Provincial Government].

³[“sale” does not include sales for export across customs frontiers as defined by the Central Government, and “sell” shall be construed accordingly.]

Prohibition of
poppy
cultivation and
possession etc.,
of opium.

4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

⁵[(a)] possess opium;

⁵[(b)] transport opium;

⁵[(c)] import or export opium; or

⁵[(d)] sell opium.

¹These words were substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These definitions were substituted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

³This definition was inserted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴Original clauses (a) and (b) were omitted by the Dangerous Drugs Act, 1930 (II of 1930).

⁵Original clauses (c), (d), (e) and (f) were re-lettered, *ibid.*

of 1878.]

(Secs. 5—7.)

5. The ¹[Provincial Government], * * * * may, ^{Power to make} from time to time, by notification in the ^{rules to permit} ^{such matters.} ²[*Official Gazette*], make rules consistent with this Act, to permit absolutely, or subject to the payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters:—

- * * * * *
- ³[(a)] the possession of opium;
 - ⁴[(b)] the transport of opium;
 - ⁵[(c)] the importation or exportation of opium; and
 - ⁶[(d)] the sale of opium and the form of taxation leviable on such sale:

II of 1930. Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law relating to sea-customs for the time being in force or under ⁷[the *Dangerous Drugs Act, 1930*].

6. [*Duty on opium imported by land.*] Rep. by the *Dangerous Drugs Act, 1930* (II of 1930).

⁸7. The Provincial Government may, by notification published in the *Official Gazette*, declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by that Government, or into any specified part thereof, and intended to be exported thence. Warehousing
Opium.

So long as the declaration remains in force, the owner of all such opium shall be bound to deposit it in that warehouse.

¹See foot-note 1 on p. 528, *ante*.

²The words "subject to the control of the Governor General in Council," were omitted by s. 3(1) of the *Opium (Bengal Amendment) Act, 1933* (Ben. Act V of 1933).

³These words were substituted for the words "local Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴Original clauses (a) and (b) were omitted by s. 40 and Sch. II of the *Dangerous Drugs Act, 1930* (II of 1930).

⁵Original clauses (c), (d), (e) and (f) were re-lettered, *ibid*.

⁶Clause (d) was substituted for clause (d) by s. 3(2) of the *Opium (Bengal Amendment) Act, 1933* (Ben. Act V of 1933).

⁷These words and figure were substituted for the word and figure "section 6" by s. 40 and Sch. II of the *Dangerous Drugs Act, 1930* (II of 1930).

⁸Section 7 was substituted for the original section 7 by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Secs. 8, 9.)

Power to
make rules
relating to
warehouses.

8. The ¹[Provincial Government], * * * may, from time to time, by notification in the ²[*Official Gazette*], make rules consistent with this Act to regulate the safe custody of opium warehoused under section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Penalty for
illegal culti-
vation of
poppy, etc.

9. Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

³[(a)] possesses opium, or

³[(b)] transports opium, or

³[(c)] imports or exports opium, or

³[(d)] sells opium, or

³[(e)] omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule,

shall, on conviction before a ⁴[Court], be punished for each such offence with imprisonment for a term which may extend to ⁵[two years or with fine], or with both;

and, where a fine is imposed, the convicting ⁶[Court] shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

⁸*Explanation*.—The possession of a railway receipt or a steamer or mate's receipt relating to an undelivered parcel of opium lying in a railway or steamer office *prima facie* constitutes possession of the opium within

¹See foot-note 1 on p. 528, *ante*.

²The words "subject to the control of the Governor General in Council," were omitted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

³See foot-note 3 on p. 529, *ante*.

⁴Original clauses (a) and (b) were omitted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

⁵Original clauses (c), (d), (e), (f) and (g) were re-lettered, *ibid*.

⁶This word was substituted for the word "Magistrate" by s. 4(2) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

⁷These words were substituted for the words "one year, or with fine which may extend to one thousand rupees" by s. 4(1), *ibid*.

⁸The *Explanation* was added by s. 4(3), *ibid*.

of 1878.]

(Secs. 9A—9C.)

the meaning of clause (a) of section 9, unless the accused person is able to give a satisfactory explanation for its possession.

9A. (1) When opium is imported, exported, transported, sold or possessed by any person on account of any other person, and such other person knows or has reason to believe that such import, export, transport, sale or possession is on his account, the article shall, for the purposes of this Act, be deemed to be imported, exported, transported, sold or possessed by such other person.

Import, export, transport, sale or possession by one person on account of another.

(2) Nothing in sub-section (1) shall absolve any person who imports, exports, transports, sells or possesses opium on account of another person from liability to any punishment under this Act, for the unlawful import, export, transport, sale or possession of such article.

9B. When any offence punishable under section 9 is committed by any person in the employ and acting on behalf of the holder of a license, permit or pass granted under this Act, such holder shall also be punishable as if he had himself committed the offence unless he establishes that all due and reasonable precautions were exercised by him to prevent the commission of such offence.

Criminal liability of licensee for acts of servant.

9C. If the holder of any license, permit or pass granted under this Act or any person in his employ and acting on his behalf—

Penalty for certain acts by licensee or his servant.

- (a) fails to produce without satisfactory explanation such license, permit or pass on the demand of any officer empowered by the ²[Provincial Government] by notification in the ³[*Official Gazette*] to make such demand, or
- (b) in any case not provided for by section 9, wilfully contravenes any rule made under section 5 or section 8, or
- (c) wilfully and knowingly does any act in breach of any of the conditions of the license, permit or pass, for which a penalty is not prescribed elsewhere in this Act,

he shall, for every such offence, be punished with fine which may extend to five hundred rupees.

¹Sections 9A to 9G were inserted by s. 5 of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

²See foot-note 1 on p. 528, *ante*.

³See foot-note 3 on p. 529, *ante*.

(Secs. 9D—10.)

Penalty for possession of opium in respect of which an offence has been committed.

9D. If any person without lawful authority has in his possession any quantity of opium knowing the same to have been unlawfully imported, transported, or manufactured or knowing that the prescribed duty has not been paid thereon, he shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty for attempting or abetting offence.

9E. Whoever attempts to commit or abets the commission of an offence punishable under this Act, shall be punished with the punishment provided for such offence.

Explanation.—The word “abets” as used in this section and in section 9F has the same meaning as in section 107 of the Indian Penal Code.

Act XLV
of 1860.

Penalty for attempting or abetting offence outside Bengal.

9F. Any person who in Bengal attempts or abets the commission, in any place outside Bengal, of any offence punishable under this Act or under the provisions of any corresponding law in force in that place, or does any act preparatory to, or in furtherance of, any act which, if committed in Bengal, would constitute an offence against this Act, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

Explanation.—The offences referred to in this section are independent of the existence, location, possession, origin, destination or other attribute of the opium to which they relate.

Enhanced punishment after previous conviction.

9G. Whoever, having been convicted of an offence punishable under sections 9, 9A, 9B, 9C, 9D, 9E, or 9F, shall be guilty of any offence punishable under any of those sections, shall be liable for each such subsequent offence to twice the punishment which might be imposed on a first conviction under this Act:

Provided that nothing in this section shall prevent any offence, which might otherwise have been tried summarily under Chapter XXII of the Code of Criminal Procedure, 1898, from being so tried.

Act V of
1898.

Presumption in prosecutions under section 9.

10. In prosecutions under section 9, it shall be presumed until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

¹See foot-note 1 on p. 531, ante.

of 1878.]

(Secs. 11, 12.)

11. In any case in which an offence ¹[under section 9, 9A, 9B, 9C, 9D, 9E, 9F, or 9G] has been committed,— Confiscation of opium.

* * * * *

³[(a)] the opium in respect of which any offence ⁴* * * has been committed,

³[(b)] where, in the case of an offence ⁵[relating to the transport, import or export of opium], the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting,

³[(c)] where, in the case of an offence ⁶[relating to the sale of opium], the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The ⁷[receptacles], packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the ⁸[receptacle] or package in which such opium may be concealed, and the animals, ⁹[carts, vessels, rafts] and conveyances used in carrying it, shall likewise be liable to confiscation.

12. When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the ¹⁰[Court] decides that the opium is liable to confiscation, such confiscation may be ordered by the ¹⁰[Court].

Order of
confiscation
by whom to
be made.

¹These words, figures and letters were substituted for the words and figure "under section 9" by s. 6(1) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

²Original clause (a) was omitted, by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

³Original clauses (b), (c) and (d) were re-lettered, *ibid.*

⁴The words "under the same section" were omitted by s. 6(2) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

⁵These words were substituted for the words "under clause (b) or (c) of the same section" by s. 6(3), *ibid.*

⁶These words were substituted for the words "under clause (d) of the same section" by s. 6(4), *ibid.*

⁷This word was substituted for the word "vessels" by s. 6(5), *ibid.*

⁸This word was substituted for the word "vessel" by s. 6(5), *ibid.*

⁹These words were inserted by s. 6(5), *ibid.*

¹⁰This word was substituted for the word "Magistrate" by s. 7, *ibid.*

(Secs. 13, 14.)

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the Collector of the district or Deputy Commissioner, or by any other officer authorized by the ¹[Provincial Government] in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

Power to make rules regarding disposal of things confiscated, and rewards.

13. The ¹[Provincial Government] may, * * * * * from time to time, by notification in the ²[*Official Gazette*], make rules consistent with this Act to regulate—

(a) the disposal of all things confiscated under this Act; and

(b) the rewards to be paid to officers and informers

* * *

Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.

14. ³[Any officer not below the rank of a sub-inspector of the Department of Excise, Police and any officer of the Customs, Salt or Revenue Departments], who may in right of his office be authorized by the ¹[Provincial Government] in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this Act

¹See foot-note 1 on p. 528, *ante*.

²The words "with the previous sanction of the Governor General in Council" which were repealed by s. 2 and Sch. I of the Devolution Act, 1920 (XXXVIII of 1920), are omitted.

³See foot-note 3 on p. 529, *ante*.

⁴The words "out of the proceeds of fines and confiscations under this Act" were omitted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were substituted for the words "Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or a constable" by s. 8(1) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

of 1878.]

(Sec. 15.)

is ¹*kept or concealed in any building, vessel or enclosed place, may, ²[at any time by day or night],—

- (a) enter into any such building, vessel, or place;
- (b) in case of resistance, break open any door and remove any other obstacle to such entry;
- (c) seize such opium ³* * * * and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium ⁴[and also any other thing or document which throws or is likely to throw any light on the alleged offence]; and
- (d) detain and search, and if he think proper, arrest any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

15. Any officer of any of the said departments ⁵[or any officer of the Department of Posts and Telegraphs or of any railway or steamer administration controlled by ⁶the Federal Railway Authority or any Government or by a railway or steamship company, such officer being duly authorised in this behalf by the ⁷[Provincial Government] may—

Power to
seize opium
in open
places.

- (a) seize, in any open place or in transit, any opium or other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium ⁸[and also any other thing or document which throws or is likely to throw any light on the alleged offence; and]

¹The word "manufactured" was omitted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

²These words were substituted for the words "between sunrise and sunset" by s. 8(2) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

³The words "and all materials used in the manufacture thereof" were omitted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

⁴These words were inserted by s. 8(3) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

⁵These words were inserted by s. 9(1), *ibid*.

⁶The words "the Federal Railway Authority or any Government" were substituted for the words "the Government" by the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933) as adapted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁷The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) order, 1937.

⁸These words were inserted by s. 9(2) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

(Secs. 16—19.)

Power to
detain,
search and
arrest.

(b) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

Searches how
made.

16. All searches under section 14 or section 15 shall be made in accordance with the provisions of the 'Code of Criminal Procedure.

Officers to
assist
each other.

17. ²[The officers referred to in sections 14 and 15] shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Vexatious
entries,
searches,
seizures and
arrests.

18. ³[If any of the said officers], without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place, or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person,

⁴[he] shall, for every such offence, be punished with fine not exceeding five hundred rupees.

Issue of
warrants.

19. The Collector of the district, Deputy Commissioner or other officer authorised by the ⁵[Provincial Government] in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

All warrants issued under this section shall be executed in accordance with the provisions of the 'Code of Criminal Procedure.

¹See now the Code of Criminal Procedure, 1898 (Act V of 1898).

²These words were substituted for the words "The officers of the several departments mentioned in section 14" by s. 10 of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

³These words were substituted for the words "Any officer of any of the said departments who" by s. 11(1), *ibid*.

⁴This word was inserted by s. 11(2), *ibid*.

⁵See foot-note 1 on p. 528, *ante*.

of 1878.]

(Secs. 20, 20A.)

'20. (1) The ²[Provincial Government] may, by notification in the ³[*Official Gazette*], authorize any class of officers of the Excise, Police or Customs Department to investigate offences, and to grant bail to persons arrested, under this Act.

Power of Provincial Government to authorize officers to investigate offences and grant bail.

(2) The ²[Provincial Government] may, from time to time, determine the form of the bail bond to be used.

'20A. (1) When any person is arrested or any opium or other thing is seized under the provisions of this Act, the person making the arrest or seizure shall, if he is an officer of the Excise, Police or Customs Department, forthwith forward the person arrested or the thing seized to the nearest officer of his department empowered under section 20 unless he is himself so empowered.

Persons arrested how to be dealt with.

(2) When such arrest or seizure is made by any officer referred to in section 14 or section 15 other than an officer of the Excise, Police or Customs Department, he shall forthwith forward the person arrested or the thing seized to the nearest officer of the Excise, Police or Customs Department empowered under section 20 and having jurisdiction in the case.

(3) When any person is brought in custody before an officer empowered under section 20, or when such officer has himself arrested or procured the appearance by summons under section 20D of any person, he shall make such investigation as seems to him necessary, and shall either release such person or admit him to bail to appear, or if bail is not given, produce him or cause the officer-in-charge of the nearest police-station to produce him before a Magistrate having jurisdiction in the case:

Provided that if the investigation is not completed within twenty-four hours of the arrest, the said officer may take bail with or without security from the person arrested to appear on any subsequent date before himself, and shall, if such bail is not given, forthwith forward the arrested person to the nearest Magistrate with a report of the case, and a request to detain him in custody for such period not exceeding fourteen days as may be necessary to complete the investigation and to order his production before the said officer when necessary for such investigation.

¹Sections 20 to 20J were substituted for the original section 20 by s. 12 of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

²See foot-note 1 on p. 528, *ante*.

³See foot-note 3 on p. 529, *ante*.

[Act I

(Secs. 20B—20D.)

(4) The Magistrate to whom an arrested person is so forwarded, whether he has or has not jurisdiction to try the case, may, by order in writing stating the reasons therefor, authorize the detention of the arrested person in default of bail in such custody as he thinks fit for a term not exceeding fourteen days in the whole.

Power of
investigating
officer to
summon
witnesses.

20B. (1) An officer empowered under section 20 may summon any person to appear before himself to give evidence, or to produce any document, necessary for the purposes of an investigation.

(2) Such summons shall state whether the person summoned is required to give evidence or to produce a document or both, and shall specify a time and place for appearance.

(3) It shall be lawful for such officer instead of issuing a summons to proceed to the residence of any person whom by reason of sickness or other infirmity or by reason of rank or sex it may not seem proper to summon, and there require him to answer such questions as may be necessary for the purposes of the investigation.

(4) Any person examined in accordance with the provisions of sub-section (1) or sub-section (3) shall be bound to answer all questions relating to the investigations put to him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(5) The provisions of section 162 of the Code of Criminal Procedure, 1898, shall apply to the statements made by any person under this section. Act V of 1898.

(6) No oaths shall be administered to any such person.

Power of
investigating
officer to release
accused when
evidence
deficient.

20C. If upon an investigation under this Act it appears to the officer in charge of such investigation that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate for trial.

Power of certain
officers to
summon
suspected
persons.

20D. When any officer of the Excise, Police or Customs Department, not below such rank as may be prescribed by the ¹[Provincial Government] by notification in the ²[*Official Gazette*], has reasonable grounds for believing that any person has committed an offence

¹See foot-note 1 on p. 537, *ante*.

²See foot-note 1 on p. 528, *ante*.

³See foot-note 3 on p. 529, *ante*.

of 1878.]

(Secs. 20E—20I.)

under this Act, he may, after recording his reasons in writing, and either with or without previous investigation, summon such person to appear before him.

Act V of
1898.

20E. The provisions of the Code of Criminal Procedure, 1898, relating to summonses and compelling the appearance of persons summoned and the production of documents shall apply, as far as may be, in the case of any summons issued by an officer of the Excise, Police or Customs Department, empowered to issue a summons under this Act.

Summoning
witnesses, etc.,
how to be made.

20F. When it appears to an officer of the Excise, Police or Customs Department that a bond for appearance before himself has been forfeited, he shall forward the bond to the Magistrate having jurisdiction to try the offence of which the person bailed was accused, and the Magistrate shall deal with the matter in the manner provided by the Code of Criminal Procedure, 1898, for the forfeiture of bonds for appearance before his own court.

Procedure in
case of
forfeiture of
bond.

20G. When an officer of the Excise, Police or Customs Department forwards in custody any person accused of an offence under this Act to the Magistrate having jurisdiction to try the case or admits any such person to bail to appear before such Magistrate, he shall submit a report setting forth the name of the accused person and the nature of the offence with which he was charged and the names of the persons who appear to be acquainted with the circumstances of the case, and shall send to such Magistrate any article which it may be necessary to produce before him. Upon receipt of such report the Magistrate, shall inquire into such offence and try the person accused thereof in like manner as if such report is a report in writing made by a police officer under clause (b) of sub-section (1) of section 190 of the Code of Criminal Procedure, 1898.

Jurisdiction of
Magistrate on
receipt of report
from Excise
Officer, etc.

20H. An officer of the Excise, Police or Customs Department acting under the provisions of section 20G shall have all the powers conferred by the Code of Criminal Procedure, 1898, on an officer in charge of a police-station for the purpose of causing the appearance before the Magistrate of persons acquainted with the circumstances of the case.

Attendance of
witnesses before
Magistrate.

20I. All officers in charge of police-stations shall take charge of and keep in safe custody, pending the orders of a Magistrate or an investigating officer of the

Police to take
charge of
articles seized.

¹See foot-note 1 on p. 537, ante.

(Secs. 20J—23.)

Excise, Police or Customs Department, all articles seized under this Act which may be delivered to them, and shall allow any investigating officer who may accompany such articles to the police-station or who may be deputed for the purpose by his superior officer, to affix his seal to such articles and to take samples of and from them. All samples so taken shall also be sealed with the seal of the officer in charge of the police-station and with the seal of the accused or his agent if he is available. All such packets of samples shall be signed by the accused or his agent if he is available.

Diary of
proceedings in
investigation.

20-J. (1) Every Excise, Police or Customs officer making an investigation under this Act shall, day by day, enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and a statement of the circumstances ascertained from day to day until the investigation is closed.

(2) The provisions of sub-section (2) of section 172 of the Code of Criminal Procedure, 1898, shall apply in the case of every such diary.

Act V of
1898.

Report of
arrests and
seizures.

21. Whenever any officer makes any arrest or seizure under this Act, he shall, within ²[twenty-four hours] next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

22. [*Procedure in cases of illegal poppy cultivation.*] *Rep. by the Dangerous Drugs Act, 1930 (II of 1930).*

Recovery of
arrears of
fees, duties, etc.

23. Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

and any arrear due from any farmer of opium-revenue ³[or any person licensed in this behalf under this Act],

may be recovered from the person primarily liable to pay the same to the ⁴[Provincial Government] or from his surety (if any) as if it were an arrear of land-revenue.

¹See foot-note 1 on p. 537, *ante*.

²These words were substituted for the words "forty-eight hours" by s. 13 of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

³These words were inserted by s. 14, *ibid*.

⁴These words were substituted for the word "Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

[1878.]

(Sec. 24, 25 and Schedule.)

24. When any amount is due to a farmer of opium-revenue from his licensee, in respect of a license, such farmer may make an application to the Collector of the district, Deputy Commissioner or other officer authorized by the ¹[Provincial Government] in this behalf, praying such officer to recover such amount on behalf of the applicant; and on receiving such application, such Collector, Deputy Commissioner or other officer may in his discretion recover such amount as if it were an arrear of land-revenue, and shall pay any amount so recovered to the applicant:

Farmer may apply to Collector or other officer to recover amount due to him by licensee.

Provided that the execution of any process issued by such Collector, ²[Deputy Commissioner] or other officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer:

Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

25. When any person in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, section 74; and, upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

Recovery of penalties due under bond.

Act X of 1872.

SCHEDULE.

[ENACTMENTS REPEALED.]

Repealed by Act XII of 1891.

¹See foot-note 1 on p. 528, *ante*.

²These words were substituted for the words "Deputy Collector" by the Amending Act, 1891 (XII of 1891).

Act XIX of 1879.

(The Raipur and Khattra Laws Act, 1879.)¹

(29th October 1879.)

An Act to amend the law in force in thanas Raipur and Khattra.

Whereas the territory comprised in the *thana* of Raipur (including the independent police-outpost of Simlupal) and the *thana* of Khattra has been transferred from the district of Manbhum to the district of Bankura;

Preamble.

And whereas the said territory, when included in the district of Manbhum, formed portion of the Chota Nagpur Division, which is a scheduled district under Act No. XIV of 1874 (the Scheduled Districts Act, 1874);

And whereas it is expedient that the law in force in the said territory should be the same as the law in force in the district of Bankura; It is hereby enacted as follows:—

1. This Act may be called the Raipur and Khattra Laws Act, 1879: and it shall come into force at once.

Short title and commencement.

2. All enactments which on the first day of October, 1879, were in force in the district of Bankura and not in the said territory shall be deemed to have come into force in the said territory on that day; and all enactments which on that day were in force in the said territory and not in the district of Bankura shall be deemed to have been repealed on and from that day in the said territory.

Laws of Bankura to apply. Other laws repealed.

3. [*Pending proceedings.*] *Rep. by the Amending Act, 1891 (XII of 1891).*

4. The said territory shall be deemed to have ceased to be a scheduled district on the said first day of October, 1879.

Territory to cease to be a scheduled district.

¹LEGISLATIVE PAPERS.—For Proceedings in Council, *see* Supplement to Gazette of India, 1879, p. 1376.

LOCAL EXTENT.—This Act extends only to the *thanas* of Raipur and Khattra, in the district of Bankura—*see* the preamble.

Act XIII of 1881.

(The Fort William Act, 1881.)¹

(11th March 1881.)

An act to provide for the better government of Fort William.

Whereas it is expedient to give power to make rules for the better government of Fort William in Bengal, and to provide for the establishment of a Court within the said Fort for the trial of persons charged with breaches of such rules; It is hereby enacted as follows:—

Preamble.

1. This Act may be called the Fort William Act, 1881;

Short title and
commence-
ment.

And it shall come into force on the first day of April, 1881.

44 & 45
Vict., C.
58.
V of 1869.

But nothing herein contained shall be deemed to confer jurisdiction over any persons (other than artificers, labourers, sutlers and followers) to whom the ²[Army Act] or the Indian Articles of War, 1869,³ is or are applicable.

2. The ⁴[Central Government] may, from time to time, by notification in the ⁵[*Official Gazette*], define, for the purposes of this Act, the limits of Fort William in Bengal; and in this Act the expression "the Fort" means the area so defined.

The "Fort"

3. The Commander-in-Chief in India may, from time to time, with the sanction of the ⁴[Central Government], make rules, to be in force within the Fort, in regard to the matters specified in the schedule hereto annexed and other matters of a like nature, and may

Commander-
in-Chief may
make rules.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Gazette of India*, 1881, Pt. V, p. 48, and for Proceedings in Council, see *ibid.*, 1881, Supplement, pp. 50, 96, 280 and 384.

²These words were substituted for the words and figure "Army Discipline and Regulation Act, 1879," by the Amending Act, 1903 (I of 1903).

³Act V of 1869 has been repealed and re-enacted by the Indian Army Act, 1911 (VIII of 1911), and this reference should now be construed as a reference to the latter Act—see the General Clauses Act, 1897 (X of 1897), s. 8.

⁴These words were substituted for the words "Governor General in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were substituted for the words "*Gazette of India*", *ibid.*

(Secs. 4 --6.)

by such rules prescribe, as penalties for the infringement thereof, fine which may extend to fifty rupees, or imprisonment for a term which may extend to four days, or both.

When a sentence of fine is passed under any such rule, the term for which the Court directs the offender to be imprisoned in default of payment of such fine may extend to, and shall not exceed, four days.

When any rule is made under this section, a copy thereof, in English and such other languages as the ¹[Central Government] may from time to time direct, shall be exhibited in such conspicuous places within the Fort as the Officer Commanding the Fort may from time to time direct.

Central Government may invest officer with power to try breaches of rules.

4. The ¹[Central Government] may invest any commissioned officer in Her Majesty's Army with power to try persons charged with any infringement of the rules made under section 3.

The officer so invested is hereinafter called the Fort Magistrate.

Procedure to be followed.

5. In all cases under this Act, the Fort Magistrate shall, except as herein otherwise provided, exercise within the Fort the powers, and as nearly as may be, follow the procedure, conferred on, and prescribed for, a Presidency Magistrate by the ²[Code of Criminal Procedure, 1898]; and, subject to the power conferred by ³[section 526 of that Code], every finding, sentence or order of such Magistrate under this Act shall be final.

Act V of 1898.

Power to arrest without warrant.

6. Any police-officer, or any other person empowered in this behalf by the ¹[Central Government], by name or as a member of a specified class, may arrest without warrant any person who in his sight commits an offence punishable under this Act.

Power to police-officer to release on bail.

Every person so arrested shall be taken to the police-station within the Fort, and shall be detained there until he gives to the police-officer in charge of such station a bond, with or without sureties, as such officer may require, for a sum not exceeding one hundred rupees, to

¹See foot-note 4 on p. 545, *ante*.

²These words and figure were substituted for the words and figure "Presidency Magistrates Act, 1877" by the Amending Act, 1903 (I of 1903).

³These words and figure were substituted for the words and figures "the High Courts Criminal Procedure Act, 1875, section 147", *ibid*.

of 1881.]

(Secs. 7—9. *The Schedule.*)

appear before the Fort Magistrate at a time to be specified in such bond, or until he can be brought before such Magistrate.

7. Nothing in this Act, or in any rule made hereunder shall affect the jurisdiction of the ¹[Presidency Magistrates] or shall prevent any person from being prosecuted under any other law for any offence punishable under this Act, or from being liable to any other punishment than is provided for such offence by this Act:

Jurisdiction of Presidency Magistrates and prosecutions under other laws saved.

Provided that no person shall be punished twice for the same offence.

8. No prosecution for any offence under this Act shall be commenced after the expiration of three months next after such offence has been committed.

Limitation of time for prosecutions under Act.

9. [*Validation of penalties heretofore imposed by Garrison Quarter Master.*] *Rep. by the Amending Act, 1891 (XII of 1891).*

THE SCHEDULE.

(See section 3.)

(1) Throwing dirt or rubbish of any description into the drains or roads, or anywhere but in the appointed places.

(2) Removing night-soil without a covering or at unauthorised hours.

(3) Camp-followers, servants, and others not keeping the godowns they live in clean.

(4) Performing offices of nature in other than the appointed places.

(5) Bathing, or washing clothes or animals, in the *cunette* or other unauthorised places.

(6) Selling unwholesome articles of food, grain or drinks.

(7) Adulterating food or drinks.

(8) Making evacuations in unauthorised places.

(9) Rash or negligent driving.

(10) Picketing, training or breaking in animals.

¹These words were substituted for the words and figure "Magistrates appointed under the Presidency Magistrates Act, 1877," by the Amending Act, 1903 (1 of 1903).

(Schedule.)

- (11) Causing obstruction by vehicles on the road.
- (12) Exposing or hawking articles for sale about the roads and barracks or within the Fort without a Fort pass.
- (13) Beating drums or tom-toms.
- (14) Damaging lamps, posts, masonry or other Government property in any part of the Fort.
- (15) Disorderly behaviour in the public thoroughfares.
- (16) Gambling.
- (17) Spitting *pan* on any of the public staircases, gateways, walls and verandahs, or defacing in any way the walls of barracks, building or gateways.
- (18) Throwing slops into the drains.
- (19) Washing cooking-pots at the water-taps and wasting water.
- (20) Cooking in unauthorised places.
- (21) Hanging clothes to dry on the guns or masonry-work.
- (22) Laying out clothes, accoutrements or stable-bedding after the authorised hours.
- (23) Destroying the trees, bushes or plants, or climbing trees.
- (24) Servants smoking *hookas* in their masters' quarters or cook-houses, or keeping such quarters or cook-houses in an insanitary state.
- (25) Trespassing on parade-grounds, or making foot-paths across the grass-plots.
- (26) Being drunk and incapable.
- (27) Fighting, quarrelling and creating a disturbance, or making unnecessary noise of any kind.
- (28) Affixing bills and papers on any walls in the Fort.
- (29) Cutting grass or interfering with the grass-contractor.
- (30) Declining to show a tin pass when called upon to do so.
- (31) Being found in the garrison without a tin pass or being in possession of a ticket belonging to another.
- (32) Driving vehicles without lights or with insufficiently-greased wheels.
- (33) Swinging or sitting on the chain-fences.
- (34) Interfering in any way with the guns, carriages, or piles of shot and shell on the works, or with the packed ordnance.

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(Schedule.)

(35) Mounting the ramparts or parapets or entering the embrasures without authority.

(36) Smuggling liquor into the Fort.

(37) Burning stable-litter or lighting fires except in authorised places and at authorised hours.

(38) Carrying lights except in closed lanterns, or letting off fireworks.

(39) Removing property of any kind or description. from the Fort without written authority.

(40) Allowing animals of any sort to stray into the Fort, or to graze within the same.

(41) Slaughtering animals or exposing carcasses or offal within the Fort.

(42) Keeping dogs or poultry in unauthorised places.

(43) Buying, selling or receiving any portion of a soldier's kit.

(44) Disobedience of lawful authority in failing to attend to authorised instructions of the police or of the several sentries posted throughout the Fort.

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Act VIII of 1885.

(The Bengal Tenancy Act, 1885.)

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of 1885.]

[Chapter XIII.]

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SCHEDULE I.—REPEAL OF ENACTMENTS.

SCHEDULE II.—PARTICULARS OF RECEIPT AND OF STATEMENT OF ACCOUNT.

SCHEDULE III.—LIMITATION.

Act VIII of 1885.

(The Bengal Tenancy Act, 1885.)¹

(14th March 1885.)

An Act to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.

Whereas it is expedient to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal, it is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Tenancy Act, 1885.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Gazette of India, 1883, Pt. V, p. 129; for Report of Select Committee, see *ibid*, 1884, Pt. V, p. 25; and for Proceedings in Council, see *ibid*, 1883, Supplement, pp. 268, 831, 885, 996, 1519 and 2303; *ibid*, 1884, Supplement, pp. 633 and 1405, *ibid*, 1885, Supplement, pp. 269, 639, 743 and 776.

LOCAL EXTENT.—This Act [except section 31A] extends to the whole of the former Province of Bengal except the town of Calcutta, the Division of Orissa, and the Scheduled Districts—see s. 1(3).

The Act has never been extended to the town of Calcutta.

The Act has, with certain exceptions, restrictions and modifications, been extended, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), ss. 5 and 5A, to the Jalpaiguri district.

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4(2).

Section 31A(1) applies only to districts or parts of districts to which it is extended by the Provincial Government by notification in the *Calcutta Gazette*.

COMMENCEMENT.—Act VIII of 1885 was declared to come into force on the 1st November, 1885, by a notification, dated the 4th September, 1885—see *Calcutta Gazette*, 9th *idem*, Pt. I, p. 874. That notification was, however, modified as to the commencement of ss. 61 to 64 by Act XX of 1885, section 1, which enacted that those portions of the Act should come into force on such date, not later than the 1st day of February, 1886, as the Provincial Government might appoint, or, if no such date was appointed, then on the 1st February, 1886. (No such date was appointed.) Act XX of 1885 was repealed by the Amending Act, 1891 (XII of 1891).

(Chapter I.—Preliminary.—Sec. 1.)

Commencement.

(2) It shall come into force on such date¹ (hereinafter called the commencement of this Act) as the ²[Provincial Government], with the previous sanction of the ³[Central Government], may, by notification in the ⁴[*Official Gazette*], appoint in this behalf.

Local extent.

⁵(3) It extends by its own operation to the whole of Bengal, except—

- (i) Calcutta, that is to say, the area described in Schedule I to the Calcutta Municipal Act, 1923, but excluding the area added to Calcutta as defined in clause (I) of section 3 of that Act; Ben. Act
III of
1923.
 - (ii) (a) the area added to Calcutta as defined in clause (I) of section 3 of the Calcutta Municipal Act, 1923, or any part thereof; and
(b) any area or part of any area included in Calcutta by notification under sub-section (3) of section 543 of that Act, if such area or part is specified in a notification made in this behalf by the ²[Provincial Government];
 - (iii) * * * any area constituted a municipality under the provisions of the Bengal Municipal Act, ⁶[1932], or part thereof, if such area or part is specified in a notification made in this behalf by the ²[Provincial Government]: Ben. Act
XV of
1932.
- ⁷Provided that a notification under this clause shall be no bar to the operation of this Act in respect of agricultural lands situated within the area specified in such notification; and

¹See foot-note headed "Commencement" on p. 561, *ante*.

²These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "Governor General in Council", *ibid*.

⁴These words were substituted for the words "local official Gazette", *ibid*.

⁵Sub-section (3) was substituted for the original sub-section (3) by s. 2 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶The words "lands other than agricultural lands situated within" were omitted by s. 2(a) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

⁷This figure was substituted for the figure "1884" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938).

⁸This proviso was inserted by s. 2 (b) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

]

(Chapter I.—Preliminary.—Secs. 2, 3.)

XIV of
1874.

(iv) the Scheduled Districts specified in the Part III of the First Schedule to the Scheduled Districts Act, 1874:

Provided that no notification shall be issued under clause (ii) or clause (iii) of this sub-section, unless—

(a) it is previously published in the area concerned or part thereof in the prescribed manner; and

(b) ¹[both Chambers of the Provincial Legislature] by a resolution ²[recommend] that the notification be issued.

2. (1) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation. Repeal.

³(2) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

³(3) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

3. In this Act, unless there is something repugnant in the subject or context,— Definitions.

⁵(1) “Agricultural year” means the Bengali year commencing on the first day of *Baisakh*⁶:

Ben. Act
IV of
1928.

Provided that where, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, any other year has prevailed for agricultural purposes that year shall continue to prevail for those purposes until the first day of *Baisakh*⁶ next following the date of the commencement of that Act.

¹These words were substituted for the words “the Bengal Legislative Council” by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²This word was substituted for the word “recommends” by paragraph 5(2), *ibid.*

³These sub-sections were renumbered as sub-sections (2) and (3) by s. 3(2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928). Old sub-section (2) was omitted by s. 3(1), *ibid.*

⁵The definitions have been rearranged in alphabetical order and re-numbered consecutively by s. 129, *ibid.*

⁶This definition was substituted for the former clause (11) by s. 4(e), *ibid.*

⁶The month of *Baisakh* corresponds with the last part of April and the first part of May.

(Chapter I.—Preliminary.—Sec. 3.)

¹(2) "Collector" means the Collector of a district or any other officer appointed by the ²[Provincial Government] to discharge any of the functions of a Collector under this Act;

³(3) "complete usufructuary mortgage" means a transfer by a tenant of the right of possession in any land for the purpose of securing the payment of money or the return of grain advanced or to be advanced by way of loan upon the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage;

⁴(4) "estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government *khas mahals* and revenue-free lands not entered in any register;

⁵(5) "holding" means a parcel or parcels of land or an undivided share thereof, held by a *raiyat* or an under-*raiyat* and forming the subject of a separate tenancy ⁶[whether the *raiyat* or under-*raiyat* has held the land before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928;];

Ben. Act.
IV of 1928.

⁷(6) "landlord" means a person immediately under whom a tenant holds, and includes the Government;

⁸(7) "pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery";

⁹(8) "Permanent Settlement" means the Permanent Settlement of Bengal ¹⁰* * made in the year 1793;

¹¹(9) "permanent tenure" means a tenure which is heritable and which is not held for a limited time;

¹²(10) "prescribed" means prescribed by rules made by the ²[Provincial Government] under this Act;

¹This definition was numbered as clause (16) originally.

²See foot-note 2 on p. 562, *ante*.

³This definition was inserted by s. 4(h) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴This definition was numbered as clause (1) originally.

⁵This definition was substituted for the former clause (9) by s. 4(d) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶These words and figure were inserted by s. 2 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁷This definition was numbered as clause (4) originally.

⁸This definition was numbered as clause (6) originally.

⁹This definition was numbered as clause (12) originally.

¹⁰The words "Bihar and Orissa" were omitted by s. 4(f) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

¹¹This definition was numbered as clause (8) originally.

¹²This definition was substituted for the former clause (16) by s. 4(g) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

[1885.]

(Chapter I.—Preliminary.—Sec. 3.)

¹(11) “proprietor” means a person owning, whether in trust or for his own benefit, an estate or a part of an estate;

²(12) “registered” means registered under any Act for the time being in force for the registration of documents;

³(13) “rent” means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant:

in sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, * * *⁴[Chapter XIV] and Schedule III of this Act, “rent” includes also money recoverable under any enactment for the time being in force as if it was rent;

⁵(14) “Revenue-officer,” in any provision of this Act, includes any officer whom the⁶ [Provincial Government] may appoint, by name or by virtue of his office, to discharge any of the functions of a Revenue-officer under that provision;

⁷(15) “signed” includes “marked,” when the person making the mark is unable to write his name; it also includes “stamped” with the name of the person referred to;

⁸(16) “succession” includes both intestate and testamentary succession;

⁹(17) “tenant” means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person:

¹This definition was numbered as clause (2) originally.

²This definition was numbered as clause (18) originally.

³This definition was numbered as clause (5) originally.

⁴The word and letters “Chapter XII” were omitted by s. 4(b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵The word and letters “Chapter XIV” were inserted, for Western Bengal by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907)., and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁶This definition was numbered as clause (17) originally.

⁷See foot-note 2 on p. 562, *ante*.

⁸This definition was numbered as clause (14) originally.

⁹This definition was numbered as clause (13) originally.

¹⁰This definition was numbered as clause (3) originally.

(Chapter I.—Preliminary.—Sec. 3.)

*Provided that a person who, under the system generally known as “*adhi*,” “*barga*” or “*bhag*,” cultivates the land of another person on condition of delivering a share of the produce to that person, is not a tenant, unless—

(i) such person has been expressly admitted to be a tenant by his landlord in any document executed by him or executed in his favour and accepted by him, or

(ii) he has been or is held by a Civil Court to be a tenant;

²(18) “tenure” means the interest of a tenure-holder or an under-tenure-holder;

³(19) “village” means the area defined, surveyed and recorded as a distinct and separate village in—

(a) the general land revenue survey which has been made of the Province of Bengal, or

(b) any survey made by the Government ⁴[which has been adopted by notification in the *Calcutta* or *Eastern Bengal and Assam Gazette* or] which may be adopted by notification in the *Calcutta Gazette* as defining villages for the purposes of this clause in any specified area;

and, where a survey has not been made by, or under the authority of, the Government, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order declare to constitute a village:

*Provided that, when an order has been made under section 101 directing that a survey be made and a record-of-rights prepared in respect of any local area, estate, tenure or part thereof, the Government may, by notification in the ⁵[*Official Gazette*], declare that in such

¹This proviso was inserted by s. 4(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This definition was numbered as clause (7) originally.

³This definition was numbered as clause (10) originally. It now applies in its present form to both Eastern and Western Bengal—*vide* s. 4(d) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴These words were inserted by s. 4 (d)(i) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵This proviso which was in force in Eastern Bengal was extended to Western Bengal by s. 4(d)(ii) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶These words were substituted for the words “*Calcutta Gazette*” by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[1885.]

(Chapter II.—Classes of tenants.—Secs. 4, 5.)

local area, estate, tenure or part thereof “village” shall mean the area which for the purposes of such survey and record-of-rights may be adopted by the Revenue-officer with the sanction of the Board of Revenue ¹[accorded under the provisions of section 115A] as the unit of survey and record.

CHAPTER II.

CLASSES OF TENANTS.

4. There shall be, for the purposes of this Act, the following classes of tenants (namely):— Classes of tenants.

- (1) tenure-holders, including under-tenure-holders,
- (2) *raiyats*, and
- (3) under-*raiyats*, that is to say, tenants holding whether immediately or mediately, under *raiyats*;

and the following classes of *raiyats* (namely):—

- (a) *raiyats* holding at fixed rates, which expression means *raiyats* holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,
- (b) occupancy-*raiyats*, that is to say, *raiyats* having a right of occupancy in the land held by them, and
- (c) non-occupancy-*raiyats*, that is to say, *raiyats* not having such a right of occupancy.

5. (1) “Tenure-holder” means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by

Meaning of
“tenure-holder”
and “*raiyats*.”

¹These words were inserted by s. 4(d)(ii) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter III.—Tenure-holders.—Sec. 6.)

establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

(2) "*Raiyat*" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by [servants or labourers] or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a *raiya*t unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a *raiya*t, the Court shall have regard to—

(a) local custom; and

(b) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by a tenant exceeds one hundred standard *bighas*, the tenant shall be presumed to be a tenure-holder until the contrary is shown.

CHAPTER III.

TENURE-HOLDERS.

Enhancement of rent.

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

(a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or

held
since Permanent
Settlement liable
to enhancement
only in certain

*These words were substituted for the words "hired servants" s. 5 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV 1928).

of 1885.]

(Chapter III.—Tenure-holders.—Secs. 7—9.)

- (b) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded and that the lands are capable of affording it.

7. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

Limits of enhancement of rent of tenures.

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than 10 *per centum* of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them and shall have regard to—

- (a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and
- (b) the improvements, if any, made by the tenure-holder or his predecessors in interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

8. If it thinks that an immediate increase of rent would produce hardship, the Court may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf.

Power to order progressive enhancement.

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again

Rent once enhanced may not be altered for fifteen years.

¹Section 8 was substituted for the original section 8 by s. 6 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter III.—Tenure-holders.—Secs. 10—12.)

enhanced by the Court during the fifteen years next following the date on which it has been so enhanced¹ [and for the purposes of this section, if an order for gradual enhancement of such rent has been made by a Court in accordance with the provisions of section 8, the full rent fixed by such order shall be deemed to have come into effect from the date of such order].

Other incidents of tenures.

Permanent
tenure-holder
not liable to
ejectment.

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected:

Provided that where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

Transfer and
transmission of
permanent
tenure.

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immovable property.

Pages 570-571—

In section 12—

(1) in sub-section (2) for the portion beginning with the words and brackets “and a fee (hereinafter called ‘the landlord’s fee’)” and ending with the words “the landlord’s fee to the landlord” substitute the following, namely:—

“and there is filed in the prescribed manner with the instrument a notice of transfer in the prescribed form for service thereof on the landlord or his common agent, if any.”;

(2) for sub-section (3) substitute, the following sub-section, namely:—

“(3) When any such instrument is admitted to registration, the registering officer shall cause the notice of transfer referred to in sub-section (2) to be served on the landlord named in the notice or his common agent, if any, in the prescribed manner.”; and

(3) omit sub-section (4).

(Substituted and omitted by Bengal Act V of 1947, section 2.)

[No. 42, dated the 12th January, 1948.]

¹These words were substituted for the words “shall not register” by s. 3(a) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

²This word was inserted by s. 1 of the Bengal Tenancy (Amendment) Act, 1886 (VIII of 1886).

³These words were inserted by s. 8(f)(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter III.—Tenure-holders.—Sec. 12.)

(b) when rent is not payable in respect of the tenure, a fee of two rupees;

¹[together with ²the prescribed cost of transmission of the landlord's fee to the landlord].

(3) ³[When any such instrument is admitted to registration], the registering officer shall send to the Collector the landlord's fee ⁴[the ⁵cost necessary for the transmission of the same] and ⁶[the notice of the transfer] in the prescribed form, and the Collector shall cause the fee to be ⁷[transmitted] to, and the notice to be served on, the landlord ⁸[named in the notice,] ⁹[or his common agent, if any,] in the prescribed manner.

¹⁰(4) The landlord's fees or the prescribed cost of transmission payable under this section and under sections 13 and 15 shall be paid to the registering officer or the Court or the Collector, as the case may be, in the prescribed manner.

¹These words were added for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

²The words "the prescribed cost of transmission" were substituted for the words "the costs necessary for the transmission" by s. 8(1) (b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³These words were substituted for the words "when the registration of any such instrument is complete" by s. 3(b) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

⁴These words were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907); and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁵The word "cost" was substituted for the word "costs" by s. 8(1)(c) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶These words were substituted for the words "a notice of the transfer and registration," by s. 3(b) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

⁷The word "transmitted" in sections 12(3), 13(2) and 15 was substituted for the word "paid," for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁸The words "named in the notice" in sections 12(3), 13(2) and 15 were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁹These words were inserted by s. 9 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

¹⁰Sub-section (4) was added by s. 8(2), *ibid.*

Page 572—

In section 13—

(1) in sub-section (1), for the portion beginning with the words “the landlord’s fee” and ending with the words “as may be prescribed” substitute the following, namely:—

“such process fee as may be prescribed and also to file in the prescribed manner in the Court a notice of the sale or final foreclosure in the prescribed form for service thereof on the landlord or his common agent, if any;” and

(2) for sub-section (2), substitute the following sub-section, namely:—

“(2) When the sale has been confirmed or the decree or order absolute for foreclosure has been made, the Court shall cause the notice referred to in sub-section (1) to be served on the landlord named in the notice or his common agent, if any, in the prescribed manner”.

(Substituted by Bengal Act V of 1947, section 3.)

[No. 42, dated the 12th January, 1948.]

shall cause the fee to be ¹¹[transmitted] to, and the notice to be served on, the landlord ¹²[named in the notice] ¹³[or his common agent, if any,] in the prescribed manner.

14. [Transfer of permanent tenure by sale in execution of decree for rent.] Rep. in Western Bengal by the Bengal Tenancy (Amendment) Act, 1907 (Ben Act I

¹These words were inserted by s. 2(1) of the Bengal Tenancy (Amendment) Act, 1886 (VIII of 1886).

²These words and figures were substituted for the words and figures “section 312 of the Code of Civil Procedure” by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³These words were inserted by s. 2(2) of the Bengal Tenancy (Amendment) Act, 1886 (VIII of 1886).

⁴These words were inserted, *ibid.*

⁵These words were substituted for the words “fee prescribed” by s. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶This word and figure were substituted for the words “the last foregoing section” by s. 126, *ibid.*

⁷These words were substituted for the words “the costs necessary for its transmission” by s. 10(1), *ibid.*

⁸These words were inserted by s. 2(4) of the Bengal Tenancy (Amendment) Act, 1886 (VIII of 1886).

⁹These words were inserted, *ibid.*

¹⁰These words were substituted for the words “the costs necessary for the transmission” by s. 10(2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

¹¹See foot-note 7 on p. 571, *ante.*

¹²See foot-note 8 on p. 571, *ante.*

¹³See foot-note 9 on p. 571, *ante.*

[1928.]

(Chapter III.—Tenure-holders.—Secs. 15—17.)

of 1907), and in Eastern Bengal by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's ¹[fee required] by section 12, together with ²[the prescribed cost of transmission thereof] to the landlord, and the Collector shall cause the landlord's fee to be ³[transmitted] to, and the notice to be served on, the landlord ⁴[named in the notice,] ⁵[or his common agent,

Succession to permanent tenure.

Page 573—

In section 15 for the portion beginning with the words "to the Collector in the prescribed form" and ending with the words "in the prescribed manner" substitute the following, namely:—

"to the landlord or his common agent, if any, in the prescribed form within six months from the date of succession, in addition to or substitution of any other mode of service, in the manner referred to in sub-section (3) of section 12".

(Substituted by Bengal Act V of 1947, section 4.)

[No. 42, dated the 12th January, 1948.]

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In section 17 for the words, figures and letter "sections 12 to 16A" substitute the words, figures and letter "sections 12, 13, 15, 16 and 16A".

(Substituted by Bengal Act V of 1947, section 5.)

[No. 42, dated the 12th January, 1948.]

S. 12 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

¹These words were substituted for the words "the costs necessary for its transmission" by s. 11(1), *ibid*.

²See foot-note 7 on p. 571, *ante*.

³See foot-note 8 on p. 571, *ante*.

⁴See foot-note 9 on p. 571, *ante*.

⁵This proviso was added by s. 11(2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

The word "distrain" was omitted by s. 12, *ibid*.

⁶These words were substituted for the words "until the Collector has received the notice, fees and costs referred to in the last foregoing section" by s. 12, *ibid*.

⁷Section 16A was inserted by s. 13, *ibid*.

⁸These words and figures were substituted for the words "the foregoing sections" by s. 126, *ibid*.

(Chapter IV.—*Raiyats holding at fixed rates.*—
Sec. 18.)

CHAPTER IV.

Raiyats HOLDING AT FIXED RATES.

Incidents of
holding at
fixed rates.

18. ¹[(1) A *raiayat* holding at a rent, or rate of rent, fixed in perpetuity—

(a) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure; ²*

³[(b) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;

(c) shall be deemed to be a settled *raiayat* of the village if he complies with the conditions set forth in section 20; and

(d) shall be entitled—

(i) to plant,

(ii) to enjoy the flowers, fruits and other products of,

(iii) to fell, and

(iv) to utilise or dispose of the timber of, any tree on the land comprised in his holding.]

⁴(2) The provisions of sections 23A to 38 (both inclusive) shall not apply to *raiayats* holding at fixed rates, even though such *raiayats* have a right of occupancy in the lands of their holdings.

¹Section 18 was re-numbered as sub-section (1) by s. 14(1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The word "and" was omitted by s. 14(2)(i), *ibid*.

³Clauses (b), (c) and (d) were substituted for the original clause (b) by s. 14(2)(ii), *ibid*.

⁴Sub-section (2) was added by s. 14(3), *ibid*.

[1885.]

(Chapter IVA.—Provisions as to transfers of tenures and holdings and landlord's fees.—Secs. 18A—18C.)

CHAPTER IVA.

PROVISIONS AS TO TRANSFERS OF TENURES AND HOLDINGS AND LANDLORD'S FEES.

1 of 1872.

18A. Notwithstanding anything contained in section 13 of the Indian Evidence Act ³[1872], nothing contained in any instrument of transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, the amount or fixity of rent, the area, the transferability or any incident of any tenure or holding referred to in such instrument.

Saving as to statements in instruments of transfer where landlord is not a party.

18B. The acceptance by a landlord of ⁵[the landlord's fee] payable under Chapter III or Chapter IV in respect of any tenure or holding shall not operate—

Saving as to acceptance of landlord's fees.

⁴(a) as an admission of the permanence, the amount or fixity of rent, the area, the transferability or any incident of such tenure or holding, or

(b) as an express consent under section 88 to the division of such tenure or holding, or to the distribution of the rent payable in respect thereof.

18C. All landlord's fees and landlord's transfer fees deposited with the Collector before or after the commencement of the Bengal Tenancy (Amendment) Act,

Forfeiture of unclaimed landlord's fees.

¹This Chapter IVA was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

²Section 18A which was inserted by s. 8 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), was substituted for s. 18A as inserted by s. 8 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by s. 15 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³This figure was inserted by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939.)

⁴Section 18B was originally inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁵These words were substituted for the words "any landlord's fee" by s. 16 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶Clause (a) which originally formed part of section 18B as in force in Eastern Bengal was substituted for clause (a) as in force in Western Bengal by s. 17, *ibid.*

⁷Section 18C was substituted for section 18C as inserted by the Bengal Tenancy (Amendment) Act, 1907, and by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, by s. 18, *ibid.*

[Act VIII

(Chapter V.—Occupancy-raiyats.—Secs. 19, 20.)

1928, under Chapter III, IV or V, and all fees deposited with the Collector under sub-section (1) of section 48H shall, unless accepted or claimed by the landlord within five years from the date of service of notice, be forfeited to the Government. * * * * *

Ben. Act
IV of 1928.

CHAPTER V.

OCCUPANCY-raiyats.

General.

Continuance of
existing occu-
pancy-rights.

¹19. (1) Every *raiyat* who, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, has, by the operation of any enactment by custom or otherwise, a right of occupancy in any land, shall, when that Act comes into force, have a right of occupancy in that land.

(2) The exclusion from the operation of this Act, by a notification under clause (ii), or clause (iii) of sub-section (3) of section 1, of any area or part of any area referred to in those clauses shall not affect any right, obligation, or liability, previously acquired, incurred or accrued, in reference to such area or part thereof.

Definition of
"settled
raiyat."

20. (1) Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a *raiyat* land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled *raiyat* of that village.

²(1A) A person shall be deemed, for the purposes of this section, to have continuously held land in a village notwithstanding that such village was defined, surveyed and recorded as, or declared to constitute a village at a date subsequent to the commencement of the said period of twelve years.

¹The words "to be credited to the District Boards within the respective jurisdictions of which such fees accumulate" were omitted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²Section 19 was substituted for s. 19 as modified by the Bengal Tenancy (Amendment) Act, 1907, and by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, by s. 19 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³Sub-section (1A) was inserted by s. 2 of the Bengal Tenancy (Amendment) Act, 1925 (Ben. Act I of 1925).

of 1885.)

(Chapter V.—Occupancy-raiyats.—Secs. 21, 22.)

(2) A person shall be deemed, for the purposes of this section, to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a *raiyat* any land held as a *raiyat* by a person whose heir he is.

(4) Land held by two or more co-sharers as a *raiyat* holding shall be deemed, for the purposes of this section, to have been held as a *raiyat* by each such co-sharer.

(5) A person shall continue to be a settled *raiyat* of a village as long as he holds any land as a *raiyat* in that village and for one year thereafter.

(6) If a *raiyat* recovers possession of land under section 87, he shall be deemed to have continued to be a settled *raiyat* notwithstanding his having been out of possession more than a year.

(7) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a *raiyat*, it shall as between him and the landlord under whom he holds the land, be presumed, for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a *raiyat*.

21. (1) Every person who is a settled *raiyat* of a village within the meaning of ¹[section 20], shall have a right of occupancy in all land for the time being held by him as a *raiyat* in that village.

Settled *raiya*ts to have occupancy-rights.

(2) Every person who, being a settled *raiyat* of a village within the meaning of ¹[section 20], held land as a *raiyat* in that village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

22. (1) When the immediate landlord of an occupancy holding is a proprietor or permanent tenure-holder and the entire interests of the landlord and the *raiyat* in the holding become united in the same person by transfer, succession or in any other way whatsoever, such person shall have no right to hold the land as a *raiyat*, but

Effect of acquisition of occupancy-right by landlord.

¹This word and figure were substituted for the words "the last foregoing section" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Section 22 was substituted for the original section 22 by s. 20, *ibid*.

(Chapter V.—Occupancy-raiyats.—Secs. 23, 23A.)

shall hold it as a proprietor or a permanent tenure-holder, as the case may be, but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) Nothing in this section shall prevent the acquisition by transfer, succession or in any other way whatsoever, of the holding of an occupancy-*raiyat* or share or portion thereof, together with the occupancy-rights therein by a person who is, or becomes, jointly interested in the lands as a proprietor or a permanent tenure-holder:

Provided that a co-sharer landlord who purchases a holding of a *raiyat* at a sale in execution of a rent decree or of a certificate under this Act shall not hold the land comprised in such holding as a *raiyat* but shall hold the land as a proprietor or tenure-holder, as the case may be, and shall pay to his co-sharers a fair and equitable sum for the use and occupation of the same. The rent payable by the *raiyat* to the other co-sharer landlords at the time of the transfer shall be regarded as the fair and equitable sum until otherwise determined in accordance with the principles of this Act regulating the enhancement or reduction of the rents of occupancy-*raiyats*.

(3) A person holding land as a temporary tenure-holder or farmer of rents shall not, while so holding, acquire a right to hold as a *raiyat* any land comprised in his temporary tenure or farm.

Explanation.—A person having a right to hold the lands of an occupancy holding as a *raiyat* does not lose it by subsequently holding the land as a temporary tenure-holder or farmer of rents.

Incidence of occupancy-right.

Rights of *raiyat*
in respect of
use of land.

23. When a *raiyat* has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy * *

Rights of
occupancy-
raiyat and
landlord in trees.

*23A. Subject to the provisions of section 23, when a *raiyat* has a right of occupancy in respect of any land, he shall be entitled—

- (i) to plant,
- (ii) to enjoy the flowers, fruits and other products of,

*The words "but shall not be entitled to cut down trees in contravention of any local custom" were omitted by s. 21 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

*Section 23A was inserted by s. 22, *ibid*.

of 1935.]

(Chapter V.—Occupancy-raiyats.—Secs. 24—26 C.)

(iii) to fell, and

(iv) to utilise or dispose of the timber of,

any tree on such land.

24. An occupancy-*raiyat* shall pay rent for his holding at fair and equitable rates.

Obligation of occupancy-*raiyat* to pay rent.

25. An occupancy-*raiyat* shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

Protection from eviction except on specified grounds.

(a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

26. If a *raiyat* dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immovable property: provided that in any case in which under the law of inheritance to which the *raiyat* is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

Devolution of occupancy-right on death.

26A. [Application of sections 26B to 26J.] Rep. by s. 3 of Ben. Act. VI of 1938.

26B. The holding of an occupancy-*raiyat* or a share or a portion thereof, together with the right of occupancy therein, shall, subject to the provisions of this Act, be capable of being transferred in the same manner and to the same extent as other immovable property.

Holdings of occupancy-*raiyats* with occupancy rights transferable.

26C. (1) Every transfer shall be made by registered instrument, except in the cases of a bequest or a sale

Manner of transfer and notices to landlord and co-sharers.

¹Section 26B was inserted by s. 23 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Section 26C was substituted for the former s. 26C by s. 4 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

(Chapter V.—Occupancy-raiyats.—Sec. 26C.)

Bengal Act III of 1913.

in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913; and a registering officer shall not accept for registration any such instrument unless the sale price, or where there is no sale price, the value of the holding or portion or share thereof transferred is stated therein, and unless it is accompanied by—

- (i) a notice giving particulars of the transfer in the prescribed form, together with the process fee prescribed for the service thereof on the landlord or landlords or their common agent, if any, who is or are not party or parties to the transfer, and
- (ii) such notices and process fees as may be required by sub-section (4).

(2) In the case of a bequest of such a holding or

Page 580—

In section 26C—

- (1) in sub-section (1) after the words “is accompanied” insert the words “in the prescribed manner”;
- (2) in sub-section (2) after the word “files” insert the words “in the prescribed manner”;
- (3) in sub-section (3) after the word “files” insert the words “in the prescribed manner”; and
- (4) in sub-section (4) after the word “filed” insert the words “in the prescribed manner”.

(Inserted by Bengal Act V of 1947, section 6.)

[No. 42, dated the 12th January, 1948.]

(4) If the transfer of a portion or share of such a holding be one to which the provisions of sub-section (1) of section 26F apply, there shall be filed notices giving particulars of the transfer in the prescribed form together with process fees prescribed for the service of the notices.

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In sub-section (5) of section 26C, for the words “shall serve the notices provided in this section by registered agent” substitute the words “shall, in the prescribed manner, serve the notices for which this section provides”.

(Substituted by Ben. Act XVIII of 1940, section 2.)

[No. 10, dated the 16th January 1941.]

of 1885.]

(Chapter V.—Occupancy-raiyats.—Secs. 26D, 26E.)

transferor or where only a share or a portion of the transferor's interest has been transferred, along with the name of the transferor:

Provided that such recognition shall not operate as an admission of the amount of rent or the area or any incident of such occupancy holding other than the existence of a right of occupancy therein or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof:

Provided further that if a transfer is subsequently set aside or modified by a competent authority, the party in whose favour such order has been made shall, unless such order has been passed in a suit, appeal or other proceedings to which the landlord was a party, deposit with the authority before whom the appropriate suit or proceedings was first initiated the prescribed fee for a notice on the landlord or his common agent, if any, describing the modifications made by such order, on receipt of which notice the landlord shall cause his rent-roll to be corrected accordingly.

(6) In this section—

- (a) “transferee,” “purchaser” and “mortgagee” include their successors in interest,
- (b) “transfer” does not include partition or a lease, or, until a decree or order absolute for foreclosure is made, simple or usufructuary mortgage or mortgage by conditional sale, and
- (c) “transferor” includes a person whose interest in a holding or portion or share thereof has terminated in the circumstances mentioned in sub-section (2) or sub-section (3).

26D. [*Landlord's transfer fee.*] *Rep. by s. 5 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).*

26E. [*Procedure on sale in execution of a decree, certificate or foreclosure of mortgage.*] *Rep. by s. 5 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).*

(Chapter V.—Occupancy-raiyats.—Sec. 26F.)

Power of co-sharer of transferor to purchase.

26F. (1) Except in the case of—

- (a) a transfer to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase, or
- (b) a transfer by exchange, lease, or partition, or
- (c) a transfer by bequest, or gift (including *heba* but excluding *heba-bil-ewaz* for any pecuniary consideration) in favour of the husband or wife of the testator or the donor or of any relation by consanguinity within three degrees of the testator or donor, or
- (d) a *wakf* in accordance with the provisions of the Muhammadan Law, or
- (e) a dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual—

one or more co-sharer tenants of the holding, a portion or share of which is transferred, may within four months of the service of the notice under section 26C, apply to the Court for the said portion or share to be transferred to himself or themselves.

Explanation.—A relation by consanguinity shall, for the purposes of this section, include a son adopted under the Hindu Law.

(2) The application shall be dismissed unless the applicant or applicants at the time of making it, deposit in Court the amount of the consideration money or the value of the transferred portion or share of the holding, as stated in the said notice, together with compensation at the rate of ten *per centum* of such amount.

(3) If such deposit is made, the Court shall give notice to the transferee to appear within such period as it may fix and to state what other sums he has paid in respect of rent or in annulling incumbrances on the property since the date of the transfer. The Court shall then direct the applicants [including any person whose application under sub-section (4) has been granted] to

¹Section 26F was substituted for the former section 26F by s. 6 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

of 1885.]

(Chapter V.—Occupancy-raiyats.—Sec. 26F.)

deposit within such period as the Court thinks reasonable, such amount as the transferee has paid on such account, together with interest at the rate of six and a quarter *per centum per annum* with effect from the date on which the transferee made such payments.

(4) (a) When an application has been made under sub-section (1), any of the remaining co-sharer tenants, including the transferee, if one of them, may within the period referred to in that sub-section or within one month of the date of the application, whichever is later, apply to join in the said application; any co-sharer tenant who has not applied under either sub-section (1) or this sub-section shall not have any further power of purchase under this section.

(b) Such application to join as a co-applicant shall be dismissed unless within such period as the Court may fix, not extending beyond the period referred to in clause (a), the applicant deposits in Court for payment to the applicant or applicants under sub-section (1), such sum as the Court shall determine as the share to be paid by him for the purposes of sub-section (2). If such deposit is made, the Court shall grant the application to join, and thereafter such applicant shall be deemed to be an applicant under sub-section (1).

(5) The Court shall thereafter make an order allowing the applications under sub-section (1) of such applicants [whether they applied under sub-section (1) or sub-section (4)] who have made the deposits required by this section and directing that the deposits made under sub-sections (2) and (3) shall be paid to the transferee or to such other persons as the Court thinks equitable.

(6) In making an order under sub-section (5) in favour of more than one co-sharer tenant, the Court may apportion the property comprised in the portion or share transferred among the applicants in such manner as it deems equitable after taking existing possession into consideration; the Court shall so apportion the said property or portion thereof on the request of any applicant, and in this case may require the applicant who makes such request to make, within such period as the Court may fix, such further deposit as the Court considers necessary for equitable distribution among the remaining applicants:

Provided that no apportionment ordered under this sub-section shall operate as a division of the holding.

(Chapter V.—Occupancy-raiyats.—Sec. 26 G.)

(7) From the date of the making of the order under sub-section (5)—

- (a) the right, title, and interest in the portion or share of the holding, accruing to the transferee from the transfer shall, subject to the provisions of section 22 and to any orders passed under sub-section (6), be deemed to have vested, jointly and free from all incumbrances which have been annulled or created after the date of the transfer, in the co-sharer tenants, whose applications to purchase have been allowed under this section,
- (b) the liability of the transferee for the rent due from him on account of the transfer shall cease, and
- (c) the Court on further application of such applicant or applicants may place him or them, as the case may be, in possession of the property vested in them.

(8) When a transferee is divested of his right, title and interest under the provisions of sub-section (7), he shall for the purposes of clauses (a), (c) and (d) of section 156 be deemed to be a *raiyat* ejected from his holding by proceedings for his ejectment commencing on the date on which the application under sub-section (1) was made.

(9) Nothing in this section shall take away the right of pre-emption conferred on any person by Muhammadan Law.

(10) An appeal shall lie to the ordinary Civil Appellate Court from any order of a Court under this section.

(11) In this section “transfer” does not include simple or usufructuary mortgage or mortgage by conditional sale until a decree or order absolute for foreclosure is made.

Limitation on mortgage by occupancy-*raiyat*.

26G. (1) An occupancy-*raiyat* may enter into a complete usufructuary mortgage in respect of his holding or of a portion or share thereof for any period which does

¹Section 26G was inserted by s. 23 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928.)

In section 26G, for sub-section (1a), substitute the following sub-section:—

“(1a) Notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract, every mortgage (including a mortgage by conditional sale) entered into by an occupancy-*raiyat* in respect of his holding or of a portion or share thereof in which possession of land is delivered to the mortgagee—

Ben. Act
IV of 1928.

(a) which was so entered into before the commencement of the Bengal Tenancy (Amendment) Act, 1928, and was subsisting on or after the first day of August, 1937, or

Ben. Act IV of
1928.

(b) which, being other than a usufructuary mortgage having under sub-section

Page 585—

After sub-section (1a) of section 26G insert the following sub-section:—

“(1b) Notwithstanding anything contained elsewhere in this Act or in any other law or in any contract, no mortgage (other than a complete usufructuary mortgage) entered into by an occupancy-*raiyat* in respect of his holding or of a portion or share thereof after the commencement of the Bengal Tenancy (Amendment) Act, 1940, in which possession of land is delivered to the mortgagee, shall have any force or effect.”

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o 3(1)]

[Inserted by Ben. Act XVIII of 1940, section 3(2).]

[No. 10, dated the 16th January 1941.]

XVI of
1908.

under the Indian Registration Act, 1908.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law. * * * * * no document creating or purporting to create—

(a) a complete usufructuary mortgage of the holding or of a portion or share of the holding of an occupancy-*raiyat* for a period exceeding or which can exceed fifteen years, or

*These words were inserted by s. 7(1) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

*Sub-section (1a) was inserted by s. 7(2), *ibid*.

*These words were substituted for the words “such mortgage” by s. 7(3), *ibid*.

*These words were substituted for the words “said period”, *ibid*.

*These words were substituted for the word “mortgage” by s. 7(4), *ibid*.

*Certain words were omitted by s. 7(5)(a), *ibid*.

In sub-section (4) of section 26G—

in clause (b) *after* the words “complete usufructuary mortgage” *insert* the word “or”;

after clause (b) *insert* the following clause:—

“(c) a mortgage of such holding, portion or share [other than a complete usufructuary mortgage or a usufructuary mortgage referred to in clause (b)] in which possession of land is delivered to the mortgagee,” and

for the proviso *substitute* the following:—

“Provided that—

- (i) a document referred to in clauses (a) or (b) which was executed before the commencement of the Bengal Tenancy (Amendment) Act, 1928, or Ben. Act IV of 1928.
- (ii) a document referred to in clause (c) which was executed before the Commencement of the Bengal Tenancy (Amendment) Act, 1940, Ben. Act V of 1928.

may be so received in evidence or so acted upon as a complete usufructuary mortgage for the period mentioned therein or for fifteen years, whichever is less.”

[Inserted and substituted by Ben. Act XVIII of 1940, section 3(3).]

Page 586—

In sub-section (5) of section 26G, *for* the words beginning with “to possession of” and ending with “restored thereto” *substitute* the following words:—

“to possession of the mortgaged property, and he is not forthwith given possession, apply to the Court to be restored to possession upon thereof and to be awarded such compensation as may appear to the Court to be equitable in respect of the period during which the mortgagee retained possession after the date on which the mortgagor became entitled to be restored to possession”.

[Substituted by Ben. Act XVIII of 1940, section 3(4)(a).]

[No. 10, dated the 16th January 1941.]

Page 586—

In the proviso to sub-section (5) of section 26G, *for* the word “holding” *substitute* the word “property”.

[Substituted by Ben. Act XVIII of 1940, section 3(4)(b).]

[No. 10, dated the 16th January 1941.]

of 1885.]

Page 587—

In sub-section (6) of section 266 . . .
Page 587— . . . suit instituted under sub-section (8), if
 . . . principal.

After sub-section (6) of section 26G insert the following sub-sections:—

“(7) Any order made by a Court under sub-section (6) shall have the effect of a decree of a Civil Court and shall be subject to the provisions of the Code of Civil Procedure, 1908, in respect of appeal, revision or review: Act V of 1908.

Provided that, notwithstanding anything contained in this or any other Act for the time being in force, a memorandum of appeal or application for review or revision under this sub-section shall be chargeable with a fee of twelve annas only.

(8) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract, in respect of a mortgage by conditional sale subsisting on the date of the commencement of the Bengal Tenancy (Amendment) Act, 1940, in which possession of land has been delivered to the mortgagee—

(a) the mortgagor may at any time institute a suit for a declaration that the original principal, together with all interest due thereon, has been extinguished by the profits arising from the land in respect of which, and subsequent to the date on which, possession was so delivered, and for recovery of possession of the mortgaged property, and

(b) the mortgagee may, at any time after the expiry of fifteen years from the date of the instrument creating the mortgage, institute a suit for a declaration that the original principal, together with all interest due thereon, has not been extinguished by the profits arising from the land in respect of which, and subsequent to the date on which, possession was so delivered.

(9) In any suit instituted under sub-section (8) the Court may, if it thinks fit, re-open any transaction relating to the mortgage for the purpose of ascertaining whether the mortgagee in possession has derived from the mortgaged property profits sufficient to extinguish the original principal, together with simple interest thereon calculated at the rate of eight *per centum per annum*.

(10) In any suit instituted under sub-section (8), if the Court is satisfied that the original principal, together with all interest due thereon, has been extinguished by the profits arising from the mortgaged property or by any other means, it shall make a declaration to that effect and shall pass a decree restoring possession of the mortgaged property to the mortgagor.

(Chapter V.—Occupancy-raiyats.—Sec. 30.)

- (c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract:

Provided as follows—

- (i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.
- (ii) Nothing in clause (b) shall apply to a contract by which a *raiyat* binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the *raiyat* is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and except when the *raiyat* is chargeable with default in respect of the improvement only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.
- (iii) when a *raiyat* has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the *raiyat* from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

Enhancement of
rent by suit.

30. The landlord of a holding held at a money-rent by an occupancy-*raiyat* may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds (namely):—

- ¹(a) that the rate of rent paid by the *raiyat* is below the prevailing rate paid by occupancy-*raiyats*

¹Clause (a) was substituted for the original clause (a) by s. 2 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

of 1885.]

(Chapter V.—Occupancy-raiyats.—Sec. 31.)

for land of a similar description and with similar advantages in the same village or in neighbouring villages, and that there is no sufficient reason for his holding at so low a rate;

- (b) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;
- (c) that the productive powers of the land held by the *raiyat* have been increased by an improvement effected by, or ¹[wholly or partly] at the expense of, the landlord during the currency of the present rent; and
- (d) that the productive powers of the land held by the *raiyat* have been increased by fluvial action.

Explanation.—"Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate—

Rules as to enhancement on ground of prevailing rate.

- (a) in determining what is the prevailing rate the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the *raiyat* and the prevailing rate found by the Court;
- (b) if in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under ²[Order XXVI in Schedule I to, and section 78 of, the Code of Civil Procedure, 1908], by such Revenue-officer as the ³[Provincial Government] may authorize in that behalf by rules

Act V of 1908.

¹These words were inserted by s. 24 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words and figures were substituted for the words and letters "Chapter XXV of the Code of Civil Procedure" by s. 128, *ibid*.

³These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter V.—Occupancy-raiyats.—Sec. 31A.)

made under ¹[rule 9 of Order XXVI in Schedule I to the said Code];

- (c) in determining under this section the rate of rent payable by a *raiyat*, his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of *raiyats* hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;
- (d) in ascertaining the prevailing rate of rent the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration;
- ²(e) if a favourable rate has been determined under clause (c) for any description of *raiyats*, such rate may, if the Court thinks fit, be left out of consideration in ascertaining the prevailing rate;
- ²(f) if the holding is held at a lump rental the determination of the rent to be paid may be made by ascertaining the different classes of land comprised within the holding, and applying to the area of each class the prevailing rate paid on that class within the village or neighbouring villages.

What may be taken in certain districts to be the "prevailing rate."

³31A. (1) In any district or part of a district to which this sub-section is extended by the "[Provincial Government] by notification in the "[*Official Gazette*]", whenever the prevailing rate for any class of land is to be ascertained under section 30, clause (a), by an examination of the rates at which lands of a similar description and with similar advantages are held within any

¹These words and figures were substituted for the words and figure "section 392 of the said Code" by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Clauses (e) and (f) were inserted by s. 3 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

³Section 31A was inserted by s. 4, *ibid.*

⁴See foot-note 3 on p. 589, *ante*.

⁵These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[of 1885.]

(Chapter V.—Occupancy-raiyats.—Sec. 31A.)

village or villages the highest of such rates at which, and at rates higher than which, the larger portion of those lands is held may be taken to be the prevailing rate.

Illustrations.

(a) The rates at which land of a similar description and with similar advantages is held in a village are as follow :—

<i>Bighas.</i>			Rs. a. p.
100	...	...	at 1 0 0
200	...	...	" 1 8 0
150	...	...	" 1 12 0
100	...	...	" 2 0 0
150	...	...	" 2 4 0
<hr/>			
Total 700			

Then Rs. 2-4 is not the prevailing rate, because only 150 *bighas*, or less than half, are held at that rate. Rs. 2 is not the prevailing rate, because 250 *bighas*, or less than half, are held at that or a higher rate. Re. 1-12 is the prevailing rate, because 400 *bighas*, or more than half, are held either at this or a higher rate, and this is the highest rate at which, and at rates higher than which more than half the land is held.

(b) The rates at which land of a similar description and with similar advantages is held in a village are as follow :—

<i>Bighas.</i>			Rs. a. p.
100	...	...	at 1 0 0
250	...	...	" 1 4 0
150	...	...	" 1 8 0
150	...	...	" 1 12 0
50	...	...	" 2 0 0
<hr/>			
Total 700			

(Chapter V.—Occupancy-raiyats.—Secs. 31B, 32.)

Then for the reasons given in Illustration (a), neither Rs. 2 nor Re. 1-12 is the prevailing rate, nor is Re. 1-8 the prevailing rate, because only 350 *bighas* (exactly half) are held at Re. 1-8 or at rates higher than Re. 1-8. In this case Re. 1-4 is the prevailing rate, because more than half the lands are held at Re. 1-4 or higher rates and this is the highest rate at which, and at rates higher than which, more than half the land is held.

(2) The ¹[Provincial Government] may, by a like notification, withdraw sub-section (1) from any district or part of a district to which it has been extended as aforesaid.

Limit to
enhancement of
prevailing rate.

31B. When the prevailing rate has once been determined by a Revenue-officer under Chapter X or by a Civil Court in any suit under this Act, it shall not be liable to enhancement save on the ground and to the extent specified in section 30, clause (b) and section 32.

Rules as to
enhancement
on ground of
rise in prices.

32. Where an enhancement is claimed on the ground of a rise in prices—

(a) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;

(b) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison: provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;

(c) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (a) the Court may, in its discretion, substitute any shorter periods therefor.

¹See foot-note 3 on p. 589, *ante*.

²Section 31B was inserted by s. 4 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

The Bengal Tenancy Act, 1885.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Secs. 33—36.)

33. (1) Where an enhancement is claimed on the ground of a landlord's improvement—

Rules as to enhancement on ground of landlord's improvement.

- (a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act;
- (b) in determining the amount of enhancement the Court shall have regard to—
 - (i) the increase in the productive powers of the land caused or likely to be caused by the improvement,
 - (ii) the cost of the improvement,
 - (iii) the cost of the cultivation required for utilizing the improvement, and
 - (iv) the existing rent and the ability of the land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant or his successor in interest, be subject to reconsideration in the event of the improvement not producing or ceasing to produce the estimated effect.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

Rules as to enhancement on ground of increase in productive powers due to fluvial action.

- (a) the Court shall not take into account any increase which is merely temporary or casual;
- (b) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

35. Notwithstanding anything in ¹[sections 30 to 34], the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

Enhancement by suit to be fair and equitable.

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree

Power to order progressive enhancement

¹These words and figures were substituted for the words "the foregoing sections" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Section 36 was substituted for the original section by s. 25, *ibid.*

(Chapter V.—Occupancy-raiyats.—Secs. 37, 38.)

to its full extent will be attended with hardship to the *raiyat*, it may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf. For the purposes of section 37, however, the full rent shall be deemed to have come into force from the date of the decree.

Limitation of
right to bring
successive
enhancement
suits.

37. (1) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if * * * a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

(2) Nothing in this section shall affect the provisions of ²[rule 1 of Order XXIII in Schedule I to the Code of Civil Procedure, 1908].

Act V of
1908.

Reduction of rent.

Reduction
of rent.

38. (1) An occupancy-*raiyat* * * may institute a suit for the reduction of his rent on “[one or more of] the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise (namely):—

(a) on the ground that the soil of the holding has without the fault of the *raiyat* become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, * *

¹The words “within the said period of fifteen years the rent has been commuted under section 40; or” were omitted by s. 26, of the Bengal Tenancy (Amendment) Act, 1928 (Bec. Act IV of 1928).

²These words and figures were substituted for the words and figure “section 373 of the Code of Civil Procedure” by s. 128, *ibid*.

³The words “holding at a money rent” were omitted by s. 27(i), *ibid*.

⁴These words were inserted by s. 27(ii), *ibid*.

⁵The word “or” was omitted by s. 27(ii), *ibid*.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Sec. 39.)

- (b) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent, ¹[or
- (c) on the ground that the landlord has refused or neglected to carry out the arrangements, in respect of the irrigation or the maintenance of embankments which were in force at the time when the rent was settled, and the soil of the holding has thereby deteriorated.

Explanation.—A suit for reduction of rent properly framed for the purpose may be instituted or a plea for reduction of rent taken by any one among a number of co-sharer tenants of a holding].

(2) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

Price-lists.

39. (1) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the ²[Provincial Government] may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

Price-lists
of staple
food-crops.

(2) The Collector may, if so directed by the ²[Provincial Government], prepare for any local area like price-lists relating to such past times as the ²[Provincial Government] thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the *Official Gazette*; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

¹These words within square brackets were added by s. 27(iii), of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²See foot-note 3 on p. 589, *ante*.

(Chapter V.—Occupancy-raiyats.—Chapter VI.—
Non-occupancy-raiyats.—Secs. 40—42.)

(5) The ¹[Provincial Government] shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the *Official Gazette*.

(6) In any proceedings under this chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct ²[and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct] unless and until it is proved that they are incorrect.

(7) The ¹[Provincial Government] ³* * * * * shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

“[* * *]”

40. [Commutation of rent payable in kind.] Rep. by s. 28 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

40A. [Period for which commuted rents are to remain unaltered.] Rep. by s. 29 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

CHAPTER VI.

NON-OCCUPANCY- raiyats.

Application of chapter.

41. This chapter shall apply to *raiya*ts not having a right of occupancy, who are in this Act referred to as non-occupancy-*raiya*ts.

Initial rent of non-occupancy-*raiya*t.

42. When a non-occupancy-*raiya*t is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

¹See foot-note 3 on p. 589, *ante*.

²These words were inserted by s. 5 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

³The words “subject to the control of the Governor General in Council” which were repealed by the Devolution Act, 1920 (XXXVIII of 1920) are omitted.

⁴The heading “Commutation” which was repealed by s. 28 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), is omitted.

of 1885.]

(Chapter VI.—Non-occupancy-raiyats.—Secs. 43—46.)

43. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 46:

Conditions of enhancement of rent.

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise (namely):—

Grounds on which non-occupancy-raiyats may be ejected.

- (a) on the ground that he has failed to pay an arrear of rent;
- (b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;
- (c) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;
- (d) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

45. [Conditions of ejectment on ground of expiration of lease.] Rep. in Western Bengal by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and in Eastern Bengal by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

46. (1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat unless the landlord has tendered to the raiyat ¹[a draft of an agreement] to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

Conditions of ejectment on ground of refusal to agree to enhancement.

¹These words were substituted for the words "an agreement" by s. 30(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter VI.—Non-occupancy-raiyats.—Sec. 46.)

(2) A landlord desiring to tender ¹[a draft of an agreement] to a *raiyat* under this section may file it in the office of such Court or officer as the ²[Provincial Government] appoints in this behalf for service on the *raiyat*. The Court or officer shall forthwith cause it to be served on the *raiyat* in the prescribed manner, and when it has been so served, it shall for the purposes of this section be deemed to have been tendered.

(3) If a *raiyat* on whom ¹[a draft of an agreement] has been served under sub-section (2) ³[executes the agreement] and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a *raiyat* under sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(5) If the *raiyat* does not execute the agreement and file it under sub-section (3), he shall be deemed for the purposes of this section to have refused to execute it.

(6) If a *raiyat* refuses to execute an agreement ⁴[of which a draft has been] tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(7) If the *raiyat* agrees to pay the rent so determined he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment ⁵[subject to the provisions of this Act] unless he has acquired a right of occupancy.

(8) If the *raiyat* does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(9) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by *raiyats* for land of a similar description and with like advantages in the same village.

¹These words were substituted for the words "an agreement" by s. 30 (a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²See foot-note 3 on p. 589, *ante*.

³These words were substituted for the words "executes it" by s. 30(b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴These words were inserted by s. 30(c), *ibid*.

⁵These words were substituted for the words "under the conditions mentioned in the last foregoing section" by s. 30(d), *ibid*.

of 1835.]

(Chapter VI.—Non-occupancy-raiyats.—Chapter VII.—
Under-raiyats.—Secs. 47—48B.)

(10) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

47. Where a *raiyat* has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this chapter, notwithstanding that the lease may purport to admit him to occupation.

Explanation
of "admitted
to occupation."

CHAPTER VII.

UNDER-raiyats.

Ben. Act
IV of 1928.

47A. The provisions of this chapter shall apply to all under-raiyats whether their tenancies were created before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928.

Application of
chapter VII to
all under raiyats.

48. When an under-raiyat is admitted to the occupation of land, he shall, subject to the provisions of this Act, become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission:

Liability of
under-raiyat to
pay rent.

Provided that the rent or rate of rent agreed upon shall not be less than the rent or rate of rent payable by the *raiyat* to his landlord.

48A. The rent of an under-raiyat shall not be enhanced except under the provisions of ³[sections 48B or 48D or section 48G, as the case may be].

Enhancement of
rent of under-
raiyat.

48B. (1) The money rent of an under-raiyat may be enhanced by a written registered contract:

Enhancement by
contract.

¹Section 47A was inserted by s. 9 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²Sections 48, 48A, 48B, 48C, 48D, 48E, 48F, 48G, 48H (since repealed) and 49 were substituted for original sections 48 and 49 by s. 31 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³These words, figures and letters were substituted for the words, figures and letters "section 48B or section 48D" by s. 10 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938.)

(Chapter VII.—Under-raiyats.—Sec. 48C.)

Provided that the rent shall not be enhanced so as to exceed by more than four annas in the rupee the rent previously payable by the under-raiyat, except in the following cases, namely:—

- (i) When an under-raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding wholly or partly at the cost of ¹[his landlord] and to the benefit of which the under-raiyat is not otherwise entitled, but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and except when the under-raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.
- (ii) When an under-raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of his landlord and the under-raiyat agrees, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

(2) The rent fixed by a contract under the provisions of sub-section (1), shall not be liable to enhancement during a period of fifteen years from the date of such contract.

Ejectment of
under-raiyat.

²48C. An under-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely:—

- (a) on the ground that he has failed to pay an arrear of rent:

Provided that, if the under-raiyat is one whose rent is payable in terms of cash and not of produce and he pays through the Court all arrears up to date together with such interest and damages as the Court may award, he shall not be liable to ejectment on account of such arrears;

¹These words were substituted for the words "the raiyat" by s. 11 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²See foot-note 2 on p. 599, ante.

of 1885.]

(Chapter VII.—Under-raiyats.— Sec. 48D.)

- (b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on the breach of which he is, under the terms of the contract between himself and his landlord, liable to be ejected;
- (c) on the ground that the term of his lease has expired, when he holds the land under a written lease;
- (d) on the ground that the tenancy has been terminated by his landlord by one year's notice expiring at the end of the agricultural year when he holds the land otherwise than under a written lease; or
- (e) on the ground that he does not agree to pay the rent determined by the Court under subsection (4) of section 48D:

Provided that an under-raiyat shall not be liable to ejectment on the grounds specified in clause (c) or clause (d)—

(i) if the under-raiyat has—

- (1) been admitted in a document by the landlord to have a permanent and heritable right to his land, or
- (2) been in possession of his land for a continuous period of twelve years whether before or after or partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928, or has a homestead thereon,

(ii) in the case of under-raiyats other than those described in clause (i) of this proviso unless the landlord has satisfied the Court that he requires the land for his homestead or for cultivation by himself or by members of his family or by hired servants or with the aid of partners.

48D. (1) The landlord of an under-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent of the under-raiyat, and to eject the under-raiyat if he refuses to pay the rent determined by the Court. Enhancement by suit.

¹See foot-note 2 on p. 599, ante.

(Chapter VII.—Under-raiyats.—Secs. 48E—48G.)

(2) The Court shall determine what rent is fair and equitable for the holding: provided that the rate of rent so determined shall not in the case of a money rent exceed one-third of the value of the average estimated produce of the land for the decennial period preceding the institution of the suit and in the case of a produce rent one-half of such produce.

(3) The Court shall thereupon inquire from the under-raiyat if he agrees to pay the rent so determined. If the under-raiyat agrees, he shall be entitled to remain in occupation of his holding at that rent for a term of fifteen years from the date of the agreement.

(4) If the under-raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(5) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

Application for
restitution by
under-raiyat.

¹48E. When a ²[landlord] has ejected an under-raiyat on the grounds specified in clause (c) or clause (d) of section 48C, the under-raiyat may apply to the Court by which the decree for ejectment was passed to be put in possession of the holding from which he was ejected by way of restitution if, within four years of the ejectment, the landlord sublets the holding or any portion thereof; and thereupon the Court may, if satisfied after inquiry that the landlord did not use the land for his homestead, or for cultivation by himself or by hired servants or by members of his family or with the aid of partners, order a recovery of possession on such terms, if any, with respect to compensation to the persons injured as to the Court may seem just.

Incidents of
holding of under-
raiyat.

¹48F. The holding of an under-raiyat shall descend in the same manner as other immovable property, but ³[subject to the provisions of sub-section (2) of section 48G], shall not be transferable except with the consent of the landlord.

Occupancy-
rights of
under-raiyat.

¹48G. (1) Every under-raiyat who, immediately before the commencement of the Bengal Tenancy

¹See foot-note 2 on p. 599, ante.

²This word was substituted for the word "raiyat" by s. 12 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

³These words and figures were inserted by s. 13, *ibid.*

1938.]

(Chapter VII.—Under-raiyats.—Secs. 48H, 49.)

Ben. Act
IV of
1928.

(Amendment) Act, 1928, had by custom a right of occupancy in any land, shall have a right of occupancy in that land.

(2) Every under-*raiyat* who has a right of occupancy in his holding shall have, as regards his immediate landlord, all the rights and liabilities of a *raiyat* with a right of occupancy, as set forth in—

- (i) Chapter V other than those conferred or imposed by sections 20, 21 ¹[and 22,],
- (ii) sections 65, ²* 116 and 178, so far as possible, and
- (iii) Chapter XIV,

and his holding, as against such landlord, shall be deemed to be the holding of an occupancy-*raiyat* for the purposes of the said sections or chapters.

(3) The interest of an under-*raiyat* who has a right of occupancy in his holding shall not be deemed to be a protected interest under clause (d) of section 160.

(4) The provisions of sections 48A to 48E shall not apply to an under-*raiyat* who has a right of occupancy in his holding, in so far as such provisions are inconsistent with this section.

48H. [*Provisions as to salami.*] Rep. by s. 15 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

49. (1) Notwithstanding anything contained in section 48F, an under-*raiyat* may enter into a complete usufructuary mortgage in the same manner and on the same conditions as are provided in section 26G for occupancy-*raiyats* and the provisions of that section shall apply so far as may be to under-*raiyats* as if they were occupancy-*raiyats*. Mortgage by under-*raiyat*.

(2) Such mortgage shall not be binding upon the landlord of the under-*raiyat*.

¹This word and figure were substituted for the figures and word "22, 26A to 26J" by s. 14(1) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²The figure "86" was omitted by s. 14(2), *ibid*.

³See foot-note 2 on p. 599, *ante*.

[Act VIII]

(Chapter VIIA.—Restrictions on alienation of land by aboriginals.—Sec. 49A.)

¹CHAPTER VIIA.

RESTRICTIONS ON ALIENATION OF LAND BY ABORIGINALS.

Application of chapter.

¹49A. (1) This chapter shall apply in the first instance only to the Sonthals of the districts of Birbhum, Bankura and Midnapore, who shall be deemed to be aboriginals for the purposes of this chapter.

(2) The ²[Provincial Government] may, from time to time, by notification published in the ³[*Official Gazette*], declare that the provisions of this chapter shall, in any district or local area, apply to such of the following aboriginal castes or tribes as may be specified in the notification, and that such castes or tribes shall be deemed to be aboriginals for the purposes of this chapter, namely:—

Sonthals of other districts, Bhuiyas, Bhumijes, ⁴[Dalus,], Garos, Gonds, Hadis, Hajangs, Hos, Kharias, Kharwars, Kochs (Dacca Division), Koras, Maghs (Bakarganj District), Mal and Sauria Paharias, Meches, Mundas, ⁵[Mundais,], Oraons and Turis.

(3) The publication of a notification under sub-section (2) shall be conclusive evidence that the provisions of this chapter have been duly applied to such castes or tribes.

(4) The ²[Provincial Government] may, by a like notification, declare that this chapter shall, in any district or local area, cease to apply to the Sonthals mentioned in sub-section (1) or to any caste or tribe to which it may have been applied under sub-section (2).

⁶(5) Notwithstanding anything elsewhere contained in this Act, the ²[Provincial Government] may, in the manner provided for in sub-sections (2) and (4), declare that the provisions of this chapter applicable to aboriginal *rai-yats* shall apply so far as may be, or cease to apply to *rai-yats* within such colonisation areas in the Sundarbans as may be specified in the notification.

¹Chapter VIIA (sections 49A to 49-O) was inserted by s. 2 of the Bengal Tenancy (Amendment) Act, 1918 (Ben. Act II of 1918).

²See foot-note 3 on p. 589, *ante*.

³See foot-note 5 on p. 590, *ante*.

⁴This word was inserted by s. 16 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁵This word was inserted, *ibid*.

⁶Sub-section (5) was added by s. 32 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter VIIA.—Restrictions on alienation of land by
aboriginals.—Secs. 49B—49F.)

49B. No transfer by an aboriginal tenure-holder, *raiyat* or under-*raiyat* of his right in his tenure or holding, or in any portion thereof, by private sale, gift, will, mortgage, lease or any contract or agreement, shall be valid to any extent except as provided in this chapter. Restrictions on transfer of tenant rights.

49C. An aboriginal tenure-holder may grant a lease to another aboriginal, to hold the land as a tenure-holder, or to cultivate it as a *raiyat*, in accordance with the provisions of this Act. Lease by tenure-holder.

49D. * * * * * an aboriginal *raiyat* may sub-let his holding to another aboriginal to cultivate it as an under-*raiyat*. Sub-letting by *raiyat*.

49E. (1) An aboriginal tenure-holder, *raiyat* or under-*raiyat* may enter with another aboriginal into a complete usufructuary mortgage in respect of any land under his own cultivation, for any period which does not and cannot, in any possible event, by any agreement, express or implied, exceed seven years, or the period of his own right, whichever is less: Usufructuary mortgage by tenure-holder, *raiyat* or under-*raiyat*.

XVI of
1908.

Provided that every mortgage so entered into shall be registered under the Indian Registration Act, 1908.

(2) An aboriginal tenant's power to mortgage his land shall be restricted to only one form of mortgage, namely, a complete usufructuary mortgage.

* * * * *

49F. (1) If in any case—

(a) an aboriginal tenure-holder is unable to lease his land as provided in section 49C, or an aboriginal *raiyat* is unable to sub-let his holding as provided in section 49D, or an aboriginal tenure-holder, *raiyat* or under-*raiyat* is unable to mortgage his land to another aboriginal as provided in section 49E, sub-section (1), or

(b) an aboriginal tenure-holder, *raiyat* or under-*raiyat* desires to transfer his land, or any portion thereof, by private sale, gift or will to any person,

Application to Collector for transfer in certain cases.

he may apply to the Collector for permission, in case (a), to transfer the same to a person who is not an

¹See foot-note 1 on p. 604, ante.

²The words "subject to the provisions of section 48H" were omitted by s. 17 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

³The explanation was omitted by s. 33 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter VIIA.—Restrictions on alienation of land
by aboriginals.—Secs. 49G, 49H.)

aboriginal, or in case (b), to transfer the same by private sale, gift or will to any person; and the Collector may pass such order on the application as he thinks fit.

(2) Every such transfer shall be made by registered deed, and before the deed is registered and the land transferred, the written consent of the Collector shall be obtained to the terms of the deed and to the transfer.

(3) Nothing in this section shall validate a transfer of any land or portion thereof which, by the terms upon which it is held, or by any law or local custom, would not be transferable except for the provisions of this section.

Courts not to register, or recognize as valid, transfers in contravention of this chapter.

¹49C. No transfer by an aboriginal tenure-holder, *raiyat* or under-*raiyat* in contravention of the provisions of this chapter shall be registered or in any way recognized as valid by any Court, whether in the exercise of civil, criminal or revenue jurisdiction.

Power to Collector to set aside improper transfers by tenure-holder, *raiyat* or under-*raiyat*.

¹49H. (1) If a transfer of a tenure or holding, or any portion thereof, is made by an aboriginal tenure-holder, *raiyat* or under-*raiyat* in contravention of the provisions of section 49B, or if the transferee has continued or is in possession in contravention of the provisions of section 49E, sub-section (J), or section 49F, as the case may be, the Collector may, on his own initiative or on application made in that behalf, by an order in writing, eject the transferee from such tenure, holding or portion:

Provided that—

- (a) the transferee whom it is proposed to eject has not been in continuous possession in contravention of this Act for twelve years, and
- (b) he is given an opportunity of showing cause against the order of ejectment.

(2) When the Collector has passed any order under sub-section (1), he shall either—

- (a) restore the transferred land to the aboriginal tenure-holder, *raiyat* or under-*raiyat*, or his heir or legal representative, or
- (b) failing the transferor or his heir or legal representative, declare that the right of settlement is vested in the landlord subject to the provisions of section 49J; provided

¹See foot-note 1 on p. 604, ante.

[1885.]

Pages 607-608—

For section 49K, substitute the following section, namely:—

“49K. (1) Notwithstanding anything contained in this Act, no decree or order shall be passed by any Court for the sale of the right of an aboriginal tenure-holder, *raiyat* or under-*raiyat* in his tenure or holding, or in any portion thereof, nor shall any such right be sold in execution of any decree or order:

Provided that any tenure or holding belonging to an aboriginal may be sold in accordance with the provisions of sub-section (2) in execution of a decree of a competent Court to recover an arrear of rent which has accrued in respect of the tenure or holding.

(2) When a decree for an arrear of rent which accrued in respect of a tenure or holding of an aboriginal tenant has been passed, such decree shall be executable solely by the

(ii) places the landlord in possession of the said tenure or holding or any portion thereof for any period, the decree shall, at the end of such period, be deemed to have been satisfied in full and the Collector may then restore the said tenure or holding or portion to the aboriginal tenure-holder, *raiyat* or under-*raiyat*, as the case may be, against whom the said decree was executed or to the successor in interest of such tenure-holder, *raiyat* or under-*raiyat* or may settle it with another aboriginal:

Provided that no portion of a tenure or holding shall be sold or settled by the Collector under this sub-section if such sale or settlement would result in bringing the rent for such portion below two rupees in the case of a tenure or one rupee in the case of a holding.

(3) (a) Before issuing a proclamation for the sale of any tenure or holding in execution of a decree referred to in sub-section (2), the Collector shall after hearing the decree-holder and the judgment-debtor divide the tenure or holding into such number of smaller areas to be specified as lots as the Collector thinks fit for the purpose of being sold separately and shall specify the lots in the proclamation;

(b) when any tenure or holding has been advertised for sale by the issue of a proclamation referred to in clause (a), each lot specified in the proclamation shall be put up to auction separately and as soon as the total amount of the bid reaches a sum sufficient to liquidate the amount of the decree and costs including the costs of sale, the sale shall be stopped and no further lots shall be knocked down, and if even after all the lots have been separately put up to auction the total amount of the bid does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, all the lots shall be put up to auction together.

(4) Before restoring or settling a tenure or holding under sub-section (2), the Collector may, if he is satisfied that the rent of the tenure or holding has been illegally enhanced

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(Chapter VIIA.—Restrictions on alienation of land by
aboriginals.—Secs. 49L, 49M.)

under-raiyat in his tenure or holding, or in any portion thereof, nor shall any such right be sold in execution of any decree or order:

Provided as follows:—

- (a) any tenure or holding belonging to an aboriginal may be sold, in execution of a decree of a competent Court, to recover an arrear of rent which has accrued in respect of the tenure or holding;
- (b) nothing in this section shall affect any right to execute a decree for the sale of any such tenure or holding, or the terms or conditions of any *bona fide* contract relating thereto, if such decree was passed, or such contract registered,—
 - (i) in the case of the Sonthals of the districts of Birbhum, Bankura and Midnapore, before the 1st November, 1916, and
 - (ii) in the case of other castes and tribes to which this chapter has been applied, at least one year before the date of the publication of

Page 608—

In section 49L, after the words “such tenancy or portion thereof” insert the words “other than a decree to recover an arrear of rent which has accrued in respect of such tenancy”.

(Inserted by Bengal Act XII of 1945, section 3.)

Page 608—

In section 49L, after the words “such tenancy or portion thereof” insert the words “other than a decree to recover an arrear of rent which has accrued in respect of such tenancy”.

(Inserted by West Bengal Act XII of 1947, section 2 and the First Schedule.)

[No. 43, dated the 5th June, 1949.]

Appeal and
revision.

Page 608—

In section 49M, for the word, figures and letter “or 49J” substitute the word, figures and letters “49J or 49K”.

(Substituted by Bengal Act XII of 1945, section 4.)

Page 608—

In section 49M, for the word, figures and letter “or 49J” substitute the word, figures and letters “49J or 49K”.

(Substituted by Bengal Act XII of 1945, section 4.)

[No. 37, dated the 5th December, 1945.]

of 1885.]

(Chapter VIIA.—Restrictions on alienation of land by aboriginals.—Chapter VIII.—General provisions as to rent.—Secs. 49N—50.)

(2) Notwithstanding anything in sub-section (1), an appeal from any order made under any of the sections mentioned in that sub-section by an officer acting under Chapter X of this Act shall be to such officer as the ¹[Provincial Government] may appoint in this behalf, and the orders of such officer on appeal shall be final:

Provided that, in every such case, every order passed by the said officer on appeal shall be subject to revision and modification by such officer as the ¹[Provincial Government] may appoint to deal therewith.

(3) An appeal, as provided in sub-section (1), shall lie to the Commissioner from any original order made by the Collector of the district under any of the sections mentioned in that sub-section.

²49N. Notwithstanding anything in this Act, no suit shall lie in any Civil Court to vary or set aside any order passed by the Collector in any proceeding under this chapter except on the ground of fraud or want of jurisdiction.

Bar to suits.

²49-O. Nothing in this chapter shall affect the validity of any transfer (not otherwise invalid) by a tenure-holder, *raiyat* or under-*raiyat* of his tenure or holding, or any portion thereof, made *bona fide*,—

Saving of certain transfers.

(a) in the case of the Sonthals of the districts of Birbhum, Bankura and Midnapore, before the 1st November, 1916, and

(b) in the case of other castes and tribes to which this chapter has been applied, at least one year before the date of the publication of the notification under section 49A, sub-section (2), in respect to such castes or tribes.

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

Rules and presumptions as to amount of rent.

50. (1) Where a tenure-holder or *raiyat* and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the

Rules and presumptions as to fixity of rent.

¹See foot-note 3 on p. 589, *ante*.

²See foot-note 1 on p. 604, *ante*.

(Chapter VIII.—General provisions as to rent.—
Secs. 51, 52.)

Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

(2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or *raiyat* and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before, a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

(3) The operation of this section, so far as it relates to land held by a *raiyat*, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

Presumption as
to amount of rent
and conditions
of holding.

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown to hold at the same rent and under the same conditions as in the last preceding agricultural year.

Alteration of rent on alteration of area.

Page 610—

In clause (a) of sub-section (1) of section 52, after the words "without any reduction of the rent being made" insert the following proviso:—

"Provided that no Court shall decree any addition of rent under this clause unless it is satisfied that there has in fact been an increase in the actual area of the tenure or holding since the rent previously paid was settled;"

[Inserted by Ben. Act XIII of 1939, section 2(1).]

[No. 1, dated the 15th September, 1939.]

After sub-section (1) of section 52, insert the following sub-sections :—

“(1A) In determining in a suit under clause (a) of sub-section (1) whether there has been an increase in the actual area of the tenure or holding, the Court shall inquire as to whether the present areas of other tenures or holdings in the vicinity which were settled at or about the same time or on the same standard of measurement as the tenure or holding in suit, show increases in area compared with the area originally settled similar to that alleged in respect of the tenure or holding in suit: if such increases are found to exist, it shall be presumed (notwithstanding anything contained in any contract) that there has in fact been no increase in the actual area of the tenure or holding in suit since the rent previously paid was settled.

(1B) When in a suit an increase in the actual area of the tenure or holding is proved, the Court shall, unless it is satisfied that an equivalent reduction of rent on account of reduction of area has been granted in respect of one or more of the contiguous tenures or holdings.”

Page 611—

In sub-section (1B) of section 52 after the words “on account of increase of area” add the words “unless it is satisfied that an equivalent reduction of rent on account of reduction of area has been granted in respect of one or more of the contiguous tenures or holdings”.

(Added by Ben. Act XVIII of 1940, section 4.)

[No. 10, dated the 16th January 1941.]

a river or sea or land held *khas* by the landlord or the Crown.”

[Inserted by Ben. Act XIII of 1939, section 2(2).]

[No. 1, dated the 15th September, 1939.]

(c) the length of time during which the tenancy has lasted without dispute as to rent or area; and

(d) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description, and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which, under the circumstances of the case, is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

(Chapter VIII.—General provisions as to rent.—
Secs. 53, 54.)

¹(5) When in a suit under this section the landlord or tenant is unable to indicate any particular land as held in excess, the rent to be added on account of the excess area may be calculated at the average rate of rent paid on all the lands of the holding exclusive of such excess area.

²(6) When in a suit under this section the landlord or tenant proves that—

- (i) at or about the time when the area was recorded in any *patta* or *kabuliyat* there existed in respect of the estate or permanent tenure or part thereof in which the tenure or holding is situated a practice of settlement being made after measurement of the land assessed with rent, or,
- (ii) the area entered in the counterfoil receipts corresponds with the area in the rent-roll on which the claim is based and that a practice of settlement on measurement prevailed at the time when the rent-roll was prepared,

it shall be presumed that the area of the tenure or holding was settled by measurement.

Payment of rent.

Instalments of rent.

53. Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

Time and place for payment of rent.

³**54.** (1) Every tenant shall pay or tender each instalment of rent before sunset of the day on which it falls due:

Provided that the tenant may pay or tender the rent payable for the year at any time during the year before it falls due.

(2) The payment or tender of rent may be made—

- (i) at the landlord's village-office or at such other convenient place as may be appointed in that behalf by the landlord; or

¹Sub-section (5) was added by s. 6 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

²Sub-section (6) was substituted for the former sub-section (6) by s. 34 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928.)

³Section 54 was substituted for the former section 54 by s. 35, *ibid.*

In clause (ii) of sub-section (2) of section 54, omit the words "by rules made by the Provincial Government".
(Omitted by West Bengal Act VII of 1948, section 2 and the First Schedule.)

[No. 43, dated the 5th June, 1949.]

A tender may also be made by depositing the rent in Court in accordance with the provisions of section 61.

(3) Where rent is sent by postal money-order in the manner prescribed, the Court may presume until the contrary is proved that a tender has been made.

(4) When a landlord accepts rent sent by postal money-order, the fact of this acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money-order form * * * *.

(5) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed to be an arrear.

55. (1) When a tenant makes a payment on account of rent, he may declare the year or the years and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

Appropriation of payments.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and the instalment as the landlord thinks fit.

Receipts and accounts.

56. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

Tenant making payment to his landlord entitled to a receipt.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in * * * * Schedule II to this Act as can be specified by the landlord at the time of payment:

Provided that the [Provincial Government] may, from time to time, prescribe or sanction a modified form, either generally or for any particular local area or class of cases.

¹See foot-note 3 on p. 589, *ante*.

²The words and figures "or that he has waived his rights under sections 26D, 26E, 26F or 26J" were omitted by s. 18 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act. VI of 1938).

³The words "the form of receipt given in" were omitted by s. 36 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter VIII.—General provisions as to rent.—
Secs. 57, 58.)

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

Tenant
entitled
to full
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ment of
account
at close of
year.

57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive, within three months after the end of the year, a statement of account specifying the several particulars shown in ¹* * Schedule II to this Act, or in such other form as may from time to time be prescribed by the ²[Provincial Government] either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

Penalties and fine
for withholding
receipts and
statements of
account and
failing to keep
counterparts.

58. (1) If a landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars ³[required] by section 56 for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount of value of that rent, as the Court thinks fit.

(2) If a landlord without reasonable cause refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year ³[required] in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

¹The words "the form of account given in" were omitted by s. 37 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²See foot-note 3 on p. 589, *ante*.

³This word was substituted for the word "prescribed" by s. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

*(Chapter VIII.—General provisions as to rent.—
Sec. 58.)*

¹(3) If a landlord or his agent, without reasonable cause, fails to deliver to the tenant a receipt or statement or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said sections, such landlord or agent, as the case may be, shall be liable to a fine not exceeding fifty rupees, to be imposed, after summary inquiry, by the Collector.

¹(4) The Collector may hold a summary inquiry under sub-section (3), either on information received from a Revenue-officer within one year, or upon complaint of the party aggrieved made within three months, from the date of failure, or upon the report of a Civil Court.

¹(5) Where, in any case instituted under sub-section (3), the Collector discharges any landlord or agent, and is satisfied that the complaint of the tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge, direct the tenant to pay to such landlord or agent such compensation, not exceeding fifty rupees, as the Collector thinks fit.

¹(6) An appeal shall lie to the Commissioner of the Division against any order of the Collector imposing a fine under sub-section (3) or awarding compensation under sub-section (5); and the orders passed by the Commissioner on such appeal shall, subject to any order which may be passed on revision by the Board of Revenue, be final.

¹(7) Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law for the time being in force for the recovery of a public demand.

¹(8) For the purpose of an inquiry under this section the Collector shall have power to summon, and enforce the attendance of witnesses, and compel the production of documents in the same manner as is provided in the case of a Court under ²[the Code of Civil Procedure, 1908].

Act V of
1908.

¹Sub-sections (3) to (8) were substituted for the original sub-section (3), for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

²These words and figure were substituted for the words "the Code of Civil Procedure" by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter VIII.—General provisions as to rent.—
Secs. 59—61.)

¹(9) The existence of a dispute as to the rent or area of a tenancy on account of which rent is paid shall not be deemed to be a reasonable cause for refusing, neglecting or otherwise failing to deliver—

- (a) a receipt for any amount actually paid on account of rent, or
- (b) the statement of account required by section 57,

and the refusal of the tenant to accept the receipt shall not be deemed to be a reasonable cause for failing to prepare and retain a counterfoil of such receipt as required by section 56.

Provincial Government to prepare forms of receipt and account.

59. (1) The ²[Provincial Government] shall cause to be prepared and kept for sale to landlords at all sub-divisional offices forms of receipts with counterfoils and of statements of account suitable for use under ³[sections 56 to 58].

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the ²[Provincial Government] thinks fit.

Effect of receipt by registered proprietor, manager or mortgagee.

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

Ben. Act VII of 1876.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

Deposit of rent.

Application to deposit rent in Court.

61. (1) In any of the following cases, namely:—

- (a) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;

¹Sub-section (9) was added by s. 38 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²See foot-note 3 on p. 589, *ante*.

³These words and figures were substituted for the words "the foregoing sections" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter VIII.—General provisions as to rent.—
Sec. 61.)

- (b) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;
- (c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money and no person has been empowered to receive the rent on their behalf; or
- (d) when the tenant entertains a *bona fide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court ¹[a sum not less than the amount of the money then due.]

(2) The application shall contain a statement of the grounds on which it is made; shall state—

- in cases (a) and (b), the name of the person to whose credit the deposit is to be entered ²[and the name of his common agent, if any,]
- in case (c), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and
- in case (d), the names of the person to whom the rent was last paid and of the person or persons now claiming it;

shall be signed and verified, in the manner ³[provided in] ⁴[sub-rules (2) and (3) of rule 15 of Order VI in Schedule I to the Code of Civil Procedure, 1908,] by the tenant, or, where he is not personally cognizant of the facts of the case by some person so cognizant; ⁵[and

Act V of
1908.

¹These words were substituted for the words "the full amount of money then due" by s. 39(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words were inserted by s. 39(b) (i), *ibid*.

³These words were substituted for the words "prescribed in" by s. 127, *ibid*.

⁴These words and figures were substituted for the words and figure "section 52 of the Code Civil Procedure" by s. 128, *ibid*.

⁵These words and letters were substituted for the words "and shall be accompanied by a fee of such amount as the Local Government from time to time by rule directs" by s. 39(b) (ii), *ibid*.

(Chapter VIII.—General provisions as to rent.—
Secs. 62, 63.)

shall in cases (a) and (b) be accompanied by the prescribed cost of transmission of the money deposited to the landlord and in cases (c) and (d) by a fee of the prescribed amount.]

Receipt granted by Court for rent deposited to be a valid acquittance.

62. (1) If it appears to the Court to which an application is made under ¹[section 61] that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (a) and (b) of ¹[section 61] by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that section, by the co-sharers to whom the rent is due; and

in case (d) of that section, by the person entitled to the rent.

Procedure for payment to the landlord of rent deposited.

63. The Court receiving a deposit—

(i) in case (a) or (b) of section 61 shall forthwith forward the same by postal money-order to the address of the landlord, or of the common agent, if any, of the landlord empowered to receive rent;

(ii) in case (c) or (d) of that section shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof containing a statement of all material particulars, and, if the amount of the deposit is not paid away under section 64 within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith in case (c) cause a notice of the receipt of the deposit to be posted free of charge at the landlord's village-office, if any, and in some conspicuous place in the village in which the tenure or holding or any portion thereof is situated, and in case (d) cause a like notice to be served free of charge on every person who it has reason to believe claims, or is entitled to, the deposit.

¹This word and figure were substituted for the words "the last foregoing section" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Section 63 was substituted for the former section 63 by s. 40, *ibid.*

of 1885.]

(Chapter VIII.—General provisions as to rent.—
Secs. 64, 64A.)

64. (1) The Court may pay the amount of the deposit ¹[notified under section 63] to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled. Payment or refund of deposit.

²[* * * * *]

³(2) If no payment is made ⁴[under clause (i) of section 63 or under sub-section (1) of this section] before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

³(3) No suit or other proceeding shall be instituted against ⁵[the Crown], or against any officer of ⁶[the Crown], in respect of anything done by a Court receiving a deposit under ⁷[section 62] but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

⁸*Penalty for refusing to receive rent.*

⁹64A. If a landlord or his agent refuses without reasonable cause to receive payment of rent remitted by postal money-order or deposited in Court, the landlord shall be precluded from recovering by suit interest, costs or damages in respect of the same, and the Court may in addition award to the tenant damages not exceeding twenty-five *per cent.* on the whole amount claimed by the plaintiff. Penalty for refusing to receive rent tendered by postal money-order or deposited.

¹These words and figure were inserted by s. 41(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Sub-section (2) was omitted by s. 41(b), *ibid.*

³Sub-sections (3) and (4) were re-numbered as sub-sections (2) and (3) by s. 41(c), *ibid.*

⁴These words were substituted for the words "under this section" by s. 41(d), *ibid.*

⁵These words were substituted for the words "the Secretary of State for India in Council" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶These words were substituted for the words "the Government", *ibid.*

⁷This word and figure were substituted for the words "the foregoing sections" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁸This heading and section 64A were inserted by s. 42, *ibid.*

The Bengal Tenancy Act, 1885.

[Act VIII

*(Chapter VIII.—General provisions as to rent.—
Secs. 65, 66.)*

The plea of the existence of any dispute as to the amount of rent or area of land of the tenure or holding shall not be deemed to be a reasonable cause under this section :

Provided that, when a landlord accepts rent, which has been deposited or remitted by postal money-order, the fact of his acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the application for permission to deposit or in the postal money-order form.

Arrears of rent.

Liability to sale
or arrears in
case of per-
manent tenure,
holding at fixed
rates or
occupancy
holding.

65. Where a tenant is a permanent tenure-holder, a *raiyat* holding at fixed rates or an occupancy-*raiyat*, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

Ejectment for
arrears in other
cases.

66. (1) When an arrear of rent remains due from a tenant not being a permanent tenure-holder, a *raiyat* holding at fixed rates or an occupancy-*raiyat*, at the end of the ¹[agricultural year] ²* * * the landlord may, whether he has obtained a decree for the recovery of the arrear or not and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within ³[thirty days] from the date of the decree, or when the Court is closed on the ⁴[thirtieth] day on the day upon which the Court re-opens.

(3) The Court may for special reasons extend the period of ⁵[thirty days] mentioned in this section.

¹These words were substituted for the words "Bengali year" by s. 43(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The words "where that year prevails, or at the end of the month of Jeth where the Faali or Amli year prevails" were omitted by s. 43(a), *ibid*.

³These words were substituted for the words "fifteen days" by s. 43(b), *ibid*.

⁴This word was substituted for the word "fifteenth" by s. 43(b), *ibid*.

of 1885.]

(Chapter VIII.—General provisions as to rent.—
Secs. 67—69.)

67. An arrear of rent shall bear simple interest at the rate of ¹[six and a quarter] *per centum per annum* from the expiration of that quarter of the agricultural year in which the instalment falls due ²[to the date of payment or of the institution of the suit, whichever date is earlier.] Interest on arrears.

Page 621—

In section 68, for the word “twenty-five” in both places in which it occurs *substitute* the words “twelve and a half”.

(Substituted by Ben. Act. II of 1939, section 2.)

[No. 1, dated the 15th September, 1939.]

Provided that where damages are awarded under this section: rent.

³Provided also that where damages are awarded—

- (i) the amount of such damages shall not be less than the interest accruing up to the date of the institution of the suit, and
- (ii) interest on the arrear may be awarded from the date of the institution of the suit up to the date of payment at such rate as the Court directs.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five *per centum* on the whole amount claimed by the plaintiff, as it thinks fit.

* [*]

69. [Order for appraising or dividing produce.]
Rep. by s. 45 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

¹These words were substituted for the words “twelve and-a-half” by s. 19 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²These words were substituted for the words “to the institution of the suit,” for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

³This proviso was inserted by s. 44 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴The heading was repealed by s. 45, *ibid*.

(Chapter VIII.—General provisions as to rent.—
Secs. 70—74.)

70. [Procedure where officers appointed.] Rep. by s. 45 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

71. [Rights and liabilities as to possession of crop.] Rep. by s. 45 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

Liability for rent on change of landlord or after transfer of tenure or holding.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord without notice of the transfer.

72. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

Liability for rent before transfer of occupancy-holding.

73. When an occupancy-*raiyat* transfers his holding in whole or in part the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent due before the transfer:

Provided that the transferor shall not be liable to the landlord for such arrears of rent if the transferee has agreed to pay such arrears to the landlord and the fact has been mentioned in the instrument of transfer.

Illegal cesses, etc.

Abwab, etc., illegal.

74. ²[(1)] All impositions upon tenants under the denomination of *abwab*, *mathat* or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

²(2) All impositions upon tenants of road cess or public works cess, or of both,—

(a) in excess of the net amount ³[fixed] by clause (2) of section 41 of the Cess Act, 1880, or

Ben. Act
IX of
1880.

¹Section 73 was substituted for the former section 73 by s. 46 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Section 74 was re-numbered as sub-section (1) of s. 74, and sub-sections (2) and (3) were added by s. 2 of the Bengal Tenancy (Amendment) Act, 1919 (Ben. Act III of 1919).

³This word was substituted for the word "prescribed" by s. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter VIII.—General provisions as to rent.—
Secs. 74A, 75.)

(b) on any scale in excess of that ¹[required] by clause (3) of that section,

levied in addition to the actual rent, shall be illegal, and all stipulations and reservations for payment of any such excess contained in any contract made between a landlord and a tenant on or after the 13th day of October, 1880, shall be void:

Provided that nothing in this sub-section shall affect the terms of a written contract registered before the commencement of the Bengal Tenancy (Amendment) Act, 1919:

Ben. Act
III of
1919.

IX of
1872.

Provided also that, subject to the provisions of section 72 of the Indian Contract Act, 1872, no suit shall lie for the recovery of anything paid before the commencement of the Bengal Tenancy (Amendment) Act, 1919, on account of the impositions referred to in sub-section (2).

²(3) Nothing in this section shall be deemed to affect the terms of a permanent *mukarrari* lease granted by a proprietor or holder of a permanent tenure in a permanently settled area ³[and registered before the commencement of the Bengal Tenancy (Amendment) Act, 1928.]

Ben. Act
IV of 1928.

74A. (1) If a landlord or his agent realises from a tenant any imposition declared under sub-section ⁴ of section 74 to be illegal, such landlord or agent, as the case may be, shall be liable to the same fine, to be imposed in the same manner, as in sub-section (3) of section 58, and the provisions of sub-sections (4), (7) and (8) of the said section relating to inquiry, fine and procedure shall, *mutatis mutandis* and so far as may be, apply to proceedings under this section.

Fine for realisation of *abwab*, etc.

(2) An appeal shall lie to the District Judge against an order imposing a fine under this section, and the order passed by the District Judge on such appeal shall be final.

(3) The imposition of a fine on a landlord or landlord's agent under this section shall not operate as a bar to the institution of a suit under section 75.

75. Every tenant from whom, except under any special enactment for the time being in force, any sum

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

¹This word was substituted for the word "prescribed" by s. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²See foot-note 2 on p. 622, *ante*.

³These words and figure were added by s. 47 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴Section 74A was inserted by s. 20 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

(Chapter VIII.—General provisions as to rent.—
Sec. 75A.)

of money or portion of the produce of his land is exacted by his landlord in excess of the rent ¹[or road cess or public works cess] ²[or interest] lawfully payable, may, ³[subject to the second proviso to sub-section (2) of section 74] within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

**Suspension of provisions relating to enhancement of rent.*

Suspension of provisions relating to enhancement of rent.

“75A. (1) All the provisions of this Act relating to enhancement of rent are hereby suspended for a period of ten years with effect from the twenty-seventh day of August 1937.

(2) (a) All decrees and orders enhancing rent passed under any of the provisions of this Act on or after the twenty-seventh day of August 1937 and before the date

Page 624—

In section 75A—

(1) in sub-section (1), add the following at the end, namely:—

“and all such provisions relating to enhancement of rent of a *raiyat* or an under-*raiyat* are hereby suspended for a further period of five years with effect from the twenty-seventh day of August, 1947.”;

(2) in sub-section (2)—

(a) in clause (a), add the following at the end, namely:—

“and all decrees and orders enhancing the rent of a *raiyat* or an under-*raiyat* so passed are hereby declared to be inoperative for a further period of five years from the twenty-seventh day of August, 1947.”; and

(b) in clause (b), add the following at the end, namely:—

“and any provision providing for enhancement of rent of a *raiyat* or an under-*raiyat* contained in any such contract or in any contract entered into between a landlord and a *raiyat* or an under-*raiyat* during the period of five years with effect from the twenty-seventh day of August, 1947, is hereby declared to be inoperative during the said period of five years.”

(Added by Bengal Act V of 1947, section 7.)

[No. 42, dated the 12th January, 1948.]

[of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sec. 76.)

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

76. (1) For the purposes of this Act, the term "improvement", used with reference to a ^{1*} holding, shall mean any work which adds to the value of the holding which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it. Definition of "improvement".

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section :—

(a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, ²[or for drinking] or for the use of men and cattle employed in agriculture;

³*Explanation.*—Such construction on agricultural land shall not be deemed to impair the value of the land or to render it unfit for the purposes of the tenancy;

(b) the preparation of land for irrigation;

(c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;

(d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(e) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto; and

¹The word "*raiyyat's*" was omitted by s. 48(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words were inserted by s. 48(b), *ibid.*

³This explanation was added by s. 48(c), *ibid.*

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Secs. 77—79.)

¹(f) the erection of a dwelling-house, whether of masonry, bricks, stone or any other material whatsoever, for the tenant and his family, together with all necessary out-offices.

(3) But no work executed by the ²[tenant] of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

Right to make improvements in case of holding at fixed rates and occupancy-holding.

77. (1) * * * * * neither the ⁴[tenant] nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(2) If both the ⁴[tenant] and his landlord wish to make the same improvement the ⁴[tenant] shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

⁵(3) Any fee realised from a tenant for permission to make any improvement in respect of his holding shall be deemed to be an *abwab* and the provisions of sub-section (1) of section 74 shall apply thereto.

Collector to decide question as to right to make improvement, etc.

78. If a question arises between the ⁶[*raiyat* or under-*raiyat*] and his landlord—

(a) as to the right to make an improvement, or

(b) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

79. [*Right to make improvements in case of non-occupancy holding.*] Rep. by s. 51 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

¹Clause (f) was substituted for the former clause (f) by s. 48(d) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This word was substituted for the word "*raiyat*" by s. 48(e), *ibid.*

³The words "Where a *raiyat* holds at fixed rates or has an occupancy right in his holding" were omitted by s. 49(a), *ibid.*

This word was substituted for the word "*raiyat*" by s. 49(b), *ibid.*

⁵Sub-section (3) was inserted by s. 49(c), *ibid.*

⁶In ss. 78, 82, 83 and 87 the words "*raiyat* or under-*raiyat*" were substituted for the word "*raiyat*" by s. 50, *ibid.*

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Secs. 80—82.)

80. (1) A landlord may, by application to such Revenue-officer as the ¹[Provincial Government] may appoint, register any improvement which he has lawfully made or which has been lawfully made ²[wholly or partly] at his expense or which he has assisted a tenant in making.

Registration of landlord's improvements.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the ¹[Provincial Government] from time to time ³[prescribes].

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(a) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

(b) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

81. (1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

Application to record evidence as to improvement.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the landlord and tenant or any persons claiming under them.

82. (1) Every ⁴[*raiyat* or under-*raiyat*] who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

Compensation for *raiyats'* improvements.

(2) Whenever a Court makes a decree or order for the ejectment of a ⁴[*raiyat* or under-*raiyat*], it shall determine the amount of compensation (if any) due

¹ See foot-note 3 on p. 589, *ante*.

² These words were inserted by s. 52(a) of the Bengal Tenancy (Amendment) Act. 1928 (Ben. Act, IV of 1928).

³ This word was substituted for the words "by rule directs" by s. 52(b), *ibid*.

⁴ See foot-note 6 on p. 626 *ante*.

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sec. 83.)

under this section to the ¹[*raiyat* or under-*raiyat*] for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the ¹[*raiyat* or under-*raiyat*].

(3) No compensation under this section for an improvement shall be claimable where the ¹[*raiyat* or under-*raiyat*] has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a ¹[*raiyat* or under-*raiyat*] between the second day of March, 1883, and the commencement of this Act, shall be deemed to have been made in accordance with this Act.

(5) The ²[Provincial Government] may, from time to time, by notification in the *Official Gazette*, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the ²[Provincial Government] thinks fit, and determining the qualifications of those assessors, and the mode of selecting them.

83. (1) In estimating the compensation to be awarded under ³[section 82] for an improvement, regard shall be had—

- (a) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;
- (b) to the condition of the improvement, and the probable duration of its effects;
- (c) to the labour and capital required for the making of such an improvement;
- (d) to any reduction or remission of rent or any other advantage given by the landlord to the ¹[*raiyat* or under-*raiyat*] in consideration of the improvement; and
- (e) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the ¹[*raiyat* or under-*raiyat*] has had the benefit of the improvement at an unenhanced rent.

¹See foot-note 6 on p. 626, *ante*.

²See foot-note 3 on p. 589, *ante*.

³This word and figure were substituted for the words "the last foregoing section" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

Principle
on which
compensation
is to be
estimated.

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Secs. 84—85A.)

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and ¹[*raiyat* or under-*raiyat*] agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose,

acquisition of land for building and other purposes.

and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient,

authorize the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

²[*

*]

85. [*Restrictions on sub-letting.*] Rep. by s. 53 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

Surrender and abandonment.

³85A. (1) A tenure-holder may apply to the Court for permission to surrender a tenure.

Surrender by tenure-holders.

(2) An application under sub-section (1) shall be in the prescribed form, shall give particulars, *inter alia*, of under-tenure-holders and *rai-yats*, if any, holding directly under the tenure sought to be surrendered, and of any incumbrances upon the said tenure, and shall be accompanied by the process fee prescribed for service

¹See foot-note C on p. 626, *ante*.

²The heading was repealed by s. 53 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³Section 85A was inserted by s. 22 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sec. 86.)

of notices upon the landlord or his common agent, if any, under-tenure-holders and *raiyats*, if any, referred to above and incumbrancers, if any.

(3) If the Court, after hearing the parties grants permission for the surrender of the tenure, it shall impose such equitable conditions as it may think proper.

(4) An appeal shall lie to the ordinary Civil Appellate Court from any order of a court under this section.

Surrender.

86. (1) A *raiyat* ¹[or under-*raiyat*] not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

(2) But, notwithstanding the surrender, the *raiyat* ¹[or under-*raiyat*] shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a *raiyat* ¹[or under-*raiyat*] has surrendered his holding, the Court shall, in the following cases for the purposes of sub-section (2), presume, until the contrary is shown, that such notice was so given, namely:—

(a) if the *raiyat* ¹[or under-*raiyat*] takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(b) if the *raiyat* ¹[or under-*raiyat*] ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(4) The *raiyat* ¹[or under-*raiyat*] may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a *raiyat* ¹[or under-*raiyat*] has surrendered his holding the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, ²[or when there is

¹These words were inserted by s. 23 of the Bengal Tenancy (Amendment) Act, 1938. (Ben. Act VI of 1938).

²These words were inserted by s. 54 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1935.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sec. 86A.)

an under-raiyat on the holding or part thereof] the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbent¹ [or the under-raiyat, as the case may be.]

(7) Save as provided in ²[sub-section (6)] nothing in this section shall affect any arrangement by which a raiyat ³[or under-raiyat] and his landlord may arrange for a surrender of the whole or a part of the holding.

86A. (1) If the lands of a tenure or holding or a portion of such lands are lost by diluvion, the rent of the tenure or holding shall be abated by an amount which bears the same proportion to the rent of the whole tenancy, as the area lost bears to that of the whole tenancy.

Abatement of rent on account of diluvion and re-entry into lands which reappear.

(2) (a) Notwithstanding anything contained in this Act or any other law or any contract to the contrary, the right, title and interest of the tenant or his successors-in-interest shall subsist in such lands or portions thereof during the period of loss by diluvion not exceeding twenty years and the tenant or his successors-in-interest shall have right to immediate possession on the reappearance of such lands or portion thereof within twenty years of the loss by the diluvion, and the landlord shall have right to the arrears of rent without interest or damage in respect of the land which has reappeared for the period during which it was lost or for four years whichever is less.

(b) The rent of the lands which have reappeared, shall for the purposes of the payment both of the arrears of rent under this sub-section and of the rent due thereafter (until such rent is modified in accordance with the provisions of this Act) be calculated on the rent of the remainder of the tenancy existing when possession of the lost lands is resumed, and shall bear the proportion to that rent which the area of the lands which have reappeared bears to that of the remainder of the tenancy:

Provided that in cases where the entire tenure or holding has been lost by diluvion, the rent of the portion thereof which reappears shall be calculated in like

¹These words were inserted by s. 54 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This word and figure were substituted for the words "the last foregoing sub-section" by s. 126, *ibid.*

³See foot-note 1 on p. 630, *ante.*

⁴Section 86A was substituted for former section 86A by s. 24 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sec. 87.)

manner on the rent existing when the entire tenancy was lost.

(3) Nothing shall prevent the accrual of rights under the operation of any other enactment in any portion of the lands of a tenure or holding which have been lost by diluvion, if such lands thereafter reappear as an accretion thereto.

Abandonment.

87. (1) If a ¹[*raiyat* or under-*raiyat*] voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the ¹[*raiyat* or under-*raiyat*] so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office, stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause a notice to be published in ²[the prescribed manner.]

(3) When a landlord enters under this section, the ¹[*raiyat* or under-*raiyat*] shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-*raiyat*, six months, from the date of the publication of the notice; and thereupon the Court may, on being satisfied that the ¹[*raiyat* or under-*raiyat*] did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of a holding has been sublet by a registered instrument, the landlord shall, before entering under this section, on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the ¹[*raiyat* or under-*raiyat*] who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that ¹[*raiyat* or under-*raiyat*.] If the sub-lessee refuses or neglects within ³[two months] to

¹See foot-note 6 on p. 626, *ante*.

²These words were substituted for the words "such manner as the Local Government, by rule, directs" by s. 56(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³These words were substituted for the words "a reasonable time" by s. 56(b), *ibid*.

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sec. 88.)

accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

¹(5) If an under-raiyat has—

- (a) a right of occupancy in a holding or portion thereof, or
- (b) been admitted in a document by the landlord to have a permanent and heritable right in his land, or
- (c) been in possession of his land for a continuous period of twelve years whether before or after or partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928, or has a homestead thereon,

Ben. Act
V of 1928.

the landlord shall, before entering on the holding, under this section, offer the whole holding, or part thereof, to the under-raiyat at the rent paid by him to the raiyat and on condition of the under-raiyat paying up all arrears due from that raiyat and a *salami* of five times the aforesaid rent. If the under-raiyat refuses or neglects within two months to accept the offer, the landlord may avoid the sub-tenancy and may enter on the holding and let it to another tenant, or cultivate it himself, as provided in sub-sections (1) and (2).

Subdivision of tenancy.

²88. (1) Save as provided elsewhere in this section, a division of a tenure or holding or a distribution of the rent payable in respect thereof shall not be valid unless such division or distribution has been expressly consented to in writing by both—

Division of tenancy not valid unless consented to by all parties or ordered by Civil Court.

- (a) the landlord or the entire body of landlords or their agents duly authorised in that behalf, and
- (b) all the co-sharer tenants:

Provided that, if there is proved to have been made in any landlord's rent-roll any entry showing that any tenure or holding has been divided or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution.

¹Sub-section (5) was added by s. 56(c), of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Section 88 was substituted for the former section 88 by s. 25 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sec. 88.)

(2) The Civil Court, on application made to it by one or more co-sharer tenants for a division of a tenure or holding or for a distribution of the rent payable in respect thereof, or for the annulment or modification of a previous division or distribution other than one made under this sub-section or under an agreement made between all the landlords and co-sharer tenants in conformance with the provisions of sub-section (1), may, by order in writing, direct such division of the tenure or holding or such distribution of rent as the Court considers fair and equitable, or annul or modify a division or distribution previously made other than one of the nature referred to above if the Court considers it unfair and inequitable:

Provided that—

- (a) no such order shall be passed without notice to the landlord or the entire body of landlords or their common agent, if any, and to the remaining co-sharer tenants, the prescribed process-fee for which shall accompany the application;
- (b) no order for division or distribution shall be made which would result in bringing the rent for any portion below two rupees in the case of tenures or one rupee in the case of holdings; and
- (c) nothing contained in this sub-section shall be deemed to authorise a Court on an application for division or distribution to direct a division or distribution in respect of the share of any tenant other than an applicant under this sub-section or a co-sharer tenant who has been joined as a co-applicant under sub-section (3).

(3) On receipt of notice of an application for division or distribution under sub-section (2) a co-sharer tenant may apply to be joined as a co-applicant, and upon such application the Court shall join the said co-sharer tenant as a co-applicant without further notice to the landlord or landlords and the remaining co-sharer tenants.

(4) Every order of a Court under sub-section (2) directing division of a tenure or holding or a distribution of the rent thereof shall also direct payment to the landlord of one rupee as mutation fee by each applicant or each body of applicants including co-applicants, if any, joined under sub-section (3).

of 1928.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Secs. 89—91.)

(5) Every order referred to in sub-section (4) shall state the date from which the division or distribution shall have effect and the joint and several liability of each co-sharer tenant for arrear of rent, if any, up to that date, shall subsist in all the lands of the entire tenure or holding.

(6) An appeal shall lie to the ordinary Civil Appellant Court from an order of a Court under this section, provided that it is presented within thirty days from the date of such order and is accompanied by the prescribed fee.

Ejectment.

89. No tenant shall be ejected from his tenure holding except in execution of a decree.

No ejectment except in execution of decree.

Measurements.

90. (1) Subject to the provisions of this section and any contract, a landlord may, by himself or by any person authorized by him in this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue.

Landlord's right to measure land.

(2) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases (namely):—

(a) where the area of the tenure or holding is liable by reason of alluvion or diluvion to vary from year to year, and the rent payable depends on the area;

(b) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation;

(c) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

91. (1) Where a landlord desires to measure any land which he is entitled to measure under ¹[section 90], the Civil Court may, on the application of the landlord make an order requiring the tenant to attend and point out the boundaries of the land.

Power for Court to order tenant to attend and point out boundaries.

¹This word and figure were substituted for the words "the last foregoing section" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

The Bengal Tenancy Act, 1885.

[Act VIII]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Secs. 92, 93.)

(2) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

Standard of measurement.

92. (1) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The ¹[Provincial Government] may, after local inquiry make rules declaring for any local area the standard or standards of measurement locally in use in that area; and every declaration so made shall be presumed to be correct until the contrary is shown.

Managers.

Power to call upon co-owners to show cause why they should not appoint a common manager.

93. (i) When any dispute exists between co-owners of an estate or tenure or of lands held jointly between two or more estates or tenures as to the management thereof; or

(ii) when, owing to the existence of a large number of small co-sharers in an estate or tenure, the tenants or landlords are put to inconvenience and harassment in the payment or receipt of the rent due,

the District Judge may, if it appears to him to be just and convenient, on the application of—

in case (i),—

(a) the Collector, or

(b) any one having an interest in the estate or tenure or in any of the estates or tenures; and

in case (ii),—

(a) more than half the tenants, or

(b) co-sharers holding more than half the aggregate interests in the estate or tenure,

¹See foot-note 3 on p. 589, *ante*.

²Section 93 was substituted for the former section 93 by s. 58 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—94, 95.)

direct notice to be served on all the co-owners or co-sharers calling on them to show cause why they should not appoint a common manager—

in case (i), either for the whole of the estate or tenure or estates or tenures, as the case may be, or for those portions of the estate or tenure or estates or tenures, as the case may be, which are affected by the dispute, and

in case (ii), for the estate or tenure in which the tenants or landlords are put to inconvenience or harassment:

Provided that a co-owner or co-sharer of an estate or tenure or a co-owner of lands held jointly between two or more estates or tenures shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner or co-sharer of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.

Ben. Act
VII of
1876.

94. If the co-owners fail to show cause as aforesaid within one month after service of a notice under ¹[section 93], the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

Power to order them to appoint a manager, if cause is not shown.

95. If the co-owners do not, within such period, not being less than one month after the making of an order under ²[section 94], as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

Power to appoint manager, if order is not obeyed.

(a) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof; or

(b) in any case appoint a manager.

¹This word and figure were substituted for the words "the last foregoing section" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This word and figure were substituted for the words "the last foregoing section", *ibid.*

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Secs. 96—98.)

Power to nominate person to act in all cases under clause (b) of section 95.

96. The ¹[Provincial Government] may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (b) of ²[section 95] and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

The Court of Wards Act, 1879, applicable to management by Court of Wards.

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immovable property shall apply to the management.

Ben. Act IX of 1879.

Provisions applicable to manager.

98. (1) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(6) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7) He may make any application which the proprietors could make under section 103 ³* * *.

(8) He shall be removable by the order of the District Judge and not otherwise.

¹See foot-note 3 on p. 589, *ante*.

²This word and figure were substituted for the words "the last foregoing section" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The words, figure and letter "or section 158A" which were inserted by s. 59, *ibid* were omitted by s. 26 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Secs. 99—100.)

99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

Power to restore management to co-owners.

¹99A. (1) Where two or more persons are joint or co-sharer landlords they may by an instrument in writing appoint a common agent for the whole of their joint property on behalf of

Appointment of common agent.

Page 639—

(Omit clause (b) of sub-section (1) of section 99A.

(Omitted by Bengal Act V of 1947, section 8.)

[No. 42, dated the 12th January, 1948.]

13, 15, 17 and 18,]

(c) the rent deposited in Court under section 61
[and]

⁴(d) the notices referred to in sub-section (2) of section 85A and in sub-section (2) of section 88.

(2) (a) The Collector shall, on application by the common agent and on production by him of the instrument of appointment, register the names of the common agent and the landlords appointing him and their addresses and other particulars in the prescribed manner.

(b) The name and address of such common agent shall be entered upon the receipt required under section 56 to be given on the payment of rent for the tenure or holding situated within the area for which he has been appointed under sub-section (1).

⁵100. (1) The High Court may, from time to time, make rules defining the powers and duties of managers under sections 95 to 99.

Power to make rules.

(2) The Board of Revenue may, from time to time, make rules defining the powers and duties of common agents under section 99A.

¹Section 99A was inserted by s. 60 of the Bengal Tenancy (Amendment) Act, 1928, (Ben. Act IV of 1928).

²This word, figure and letter were substituted for the figures, letters and word "26C, 26F and 48H" by s. 27(1) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

³These words and figures were substituted for the words "or the landlord's transfer fee payable under those sections, and" by s. 27(2), *ibid.*

⁴This word "and" and clause (d) were inserted by ss. 27 (3) and (4), *ibid.*

⁵Section 100 was substituted for the former section 100 by s. 61 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter X.—Record-of-rights and settlement of rents.—
Part I.—Record-of-rights.—Sec. 101.)

¹CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

Part I.—Record-of-rights.

Power to order
survey and
preparation of
record-of-rights.

101. (1) The ²[Provincial Government] may, in any case ^{3*} if it thinks fit, ^{4*} make an order directing that a survey be made and a record-of-rights be prepared by a Revenue-officer, in respect of ⁵[all lands] in any local area, estate or tenure or part thereof:

⁶Provided that the provisions of sections 104 to 105A, 109C, 109D, 110, 112 and 113 shall not apply in respect of any lands which are held by a non-agriculturist and are not used for purposes connected with agriculture or horticulture.

(2) ⁷[In particular and without prejudice to the generality of the foregoing power, the ²[Provincial Government] may make such an order in the following cases,] namely:—

⁸(a) where—

(i) the landlord or tenants, or

(ii) a proportion of not less than one-half of the total number of landlords, or

¹Chapter X was substituted for the original Chapter X by s. 7 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

²See foot-note 3 on p. 589, *ante*.

³The words "with the previous sanction of the Governor General in Council, and may" which were repealed by the Devolution Act, 1920 (XXXVIII of 1920), are omitted.

⁴The words "without such sanction in any of the cases next hereinafter mentioned" were repealed, *ibid*.

⁵These words were substituted for the words "the lands" by s. 62(i) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶This proviso was added by s. 62(ii), *ibid*.

⁷These words were substituted for the words "The cases in which an order may be made under this section without the previous sanction of the Governor General in Council are the following," by the Devolution Act, 1920 (XXXVIII of 1920).

⁸Clause (a) was substituted for the original clause (a), for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—
Part 1.—Record-of-rights.—Sec. 101.)

- (iii) a landlord, or a proportion of the landlords, whose interest, or the aggregate of whose interests, respectively, in the lands of the local area, estate or tenure or part thereof is not less than one-half of the total shares of all the landlords therein, or
 - (iv) a proportion of not less than one-fourth of the total number of tenants.
- applies, or apply, for such an order, depositing or giving security for, such amount for the payment of expenses as the ¹[Provincial Government] directs;
- (b) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally;
 - (c) where the local area, estate or tenure or the part thereof belongs to, or is managed ²[by, or on behalf of, the Crown, or is managed by] the Court of Wards ³[or a manager appointed by the District Judge under section 95];
 - (d) where a settlement of land-revenue is being or is about to be made in respect of the local area, estate or tenure or of the part thereof.

Explanation 1.—The term “settlement of land-revenue”, as used in clause (d), includes a settlement of rents in an estate or tenure which belongs to the Government.

Explanation 2.—A superior landlord may apply for an order under this section, notwithstanding that his estate or part thereof is temporarily leased to a tenure-holder.

(3) A notification in the *Official Gazette* of an order under this section shall be conclusive evidence that the order has been duly made.

(4) The survey shall be made and the record-of-rights prepared in accordance with rules made in this behalf by the ¹[Provincial Government.]

¹See foot-note 3 on p. 589, *ante*.

²These words were substituted for the words “by, the Government or” by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were added for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

(Chapter X.—Record-of-rights and settlement of rents.—
Part I.—Record-of-rights.—Sec. 102.)

Particulars to be
recorded.

102. Where an order is made under section 101, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely:—

- (a) the name of each tenant or occupant;
- (b) the class ¹[or classes] to which each tenant belongs, that is to say, whether he is a tenure-holder, *raiyat* holding at fixed rates, settled *raiyat*, occupancy-*raiyat*, non-occupancy *raiyat* or under-*raiyat*, ²[with or without a right of occupancy] and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;
- (c) the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier;
- (d) the name of each tenant's landlord;
- ³(dd) the name of each proprietor in the local area or estate;
- (e) the rent payable at the time the record-of-rights is being prepared;
- ⁴(ee) the amount payable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like at the time the record-of-rights is being prepared, the conditions and incidents appertaining to such rights, and if the amount is a gradually increasing amount, the time at which, and the increments by which, it increases;
- (f) the mode in which that rent has been fixed—whether by contract, by order of a Court, or otherwise;
- (g) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;

¹These words were inserted by s. 63(i) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words were inserted by s. 63(i), *ibid*.

³Clause (dd) was inserted for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁴Clause (ee) was inserted by s. 63(ii) of the Bengal Tenancy (Amendment) Act, 1928, (Ben Act IV of 1928).

of 1885.]

(Chapter X.—*Record-of-rights and settlement of rents.*—
Part I.—*Record-of-rights.*—Sec. 102.)

¹(*gg*) the rights and obligations of each tenant and landlord in respect of—

(*i*) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank or well, or any other source of supply, and

(*ii*) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land;

(*h*) the special conditions and incidents, if any, of the tenancy;

²(*i*) any right of way or other easement attaching to the land for which a record-of-rights is being prepared;

³(*j*) if the land is claimed to be held rent free—whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and if so entitled, under what authority:

⁴Provided that, if lands are not used for purposes connected with agriculture or horticulture, it shall be sufficient to record that fact, together with the prescribed particulars relating to the occupant, the landlord and the tenancy.

¹Clause (*gg*) was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A Act I of 1908), and is to be deemed to have been so inserted from the commencement of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

²Clause (*i*) was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A Act I of 1908).

³Clause (*j*) was formerly lettered (*i*), and was relettered (*j*), for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁴This proviso was added by s. 63(*iii*) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter X.—Record-of-rights and settlement of rents.—
Part I.—Record-of-rights.— Secs. 102A—103A.)

Power to order
survey and
preparation of
record-of-rights
as to water.

102A. The ²[Provincial Government] may, for the purpose of settling or averting disputes existing or likely to arise between landlords, tenants, proprietors, or persons belonging to any of these classes, regarding the use or passage of water,

make an order directing that a survey be made, and a record-of-rights be prepared, by a Revenue-officer, in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate or tenure or part thereof, in respect of—

- (a) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank or well, or any other source of supply; and
- (b) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land.

Power for
Revenue-officer
to record
particulars on
application of
proprietor,
tenure-holder or
large proportion
of *rai-yats*.

103. On the application of one or more of the proprietors or tenure-holders, or of a large proportion of the *rai-yats* of an estate or tenure, and on the applicant or applicants depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with, rules made in this behalf by the ²[Provincial Government], ascertain and record all or any of the particulars specified in section 102 with respect to the estate or tenure or any part thereof.

Preliminary
publication,
amendment and
final publication
of record-of
rights.

103A. (1) When a draft record-of-rights has been prepared, the Revenue-officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom, during the period of publication.

(2) When such objections have been considered and disposed of according to such rules as the ²[Provincial Government] may ³[make], and (if a settlement of

¹Section 102A was inserted for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Fen. Act I of 1907), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²See foot-note 3 on p. 589, *ante*.

³This word was substituted for the word "prescribe" by s. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—Part I.—Record-of-rights.—Sec. 103B.)

land-revenue is being or is about to be made) the Settlement Rent-roll has been incorporated with the record under section 104F, sub-section (3), the Revenue-officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner; and the publication shall be conclusive evidence that the record has been duly made under this chapter.

(3) Separate draft or final records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.

¹103B. (1) When a record-of-rights has been finally published under section 103A, the Revenue-Officer shall, within such time as the Board of Revenue may, by general or special order, ²[require], make a certificate stating the fact of such final publication and the date thereof, and shall date and subscribe the same with his name and official title.

Certificate of, and presumption as to, final publication, and presumption as to correctness, of record-of-rights.

(2) The certificate of final publication, or, in the absence of such certificate, a certificate signed by the Collector of any district in which the local area, estate, tenure or part thereof to which the record-of-rights relates is wholly or partly situate, stating that a record-of-rights has been finally published on a specified date, shall be conclusive proof of such publication and of the date thereof.

(3) The ³[Provincial Government] may, by notification, declare, with regard to any specified area, that a record-of-rights has been finally published for every village included in such area; and such notification shall be conclusive proof of such publication.

(4) In any suit or other proceeding in which a record-of-rights prepared and published under this chapter, or a duly certified copy thereof or extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published, unless such publication is expressly denied.

(5) Every entry in a record-of-rights finally published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.

¹Section 103B which was inserted by s. 21 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, was substituted for section 103B as inserted by s. 22 of the Bengal Tenancy (Amendment) Act, 1907, by s. 64 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This word was substituted for the word "prescribe" by s. 127, *ibid.*

³See foot-note 3 on p. 589, *ante.*

(Chapter X.—*Record-of-rights and settlement of rents.*—
Part II.—Settlement of rents, preparation of Settlement Rent-roll, and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.—Sec. 104.)

Part II.—Settlement of rents, preparation of Settlement Rent-roll, and ¹[disposal of objections], in cases where a settlement of land-revenue is being or is about to be made.

Settlement of rents and preparation of Settlement Rent-roll when to be undertaken by Revenue-officer.

104. In every case in which a settlement of land-revenue is being, or about to be made, the Revenue-officer shall, after publication of the draft of the record-of-rights under section 103A, sub-section (I),—

- (a) settle fair and equitable rents for tenants of every class,
- (b) notwithstanding anything contained in ²[section 191], settle a fair and equitable rent for any land in respect of which he has recorded, in pursuance of ³clause (j) of section 102, that the occupant is not entitled to hold it without payment of rent, and
- (c) prepare a Settlement Rent-roll:

⁴Provided that the Revenue-officer shall not settle the rents of tenants of every class in an estate or tenure belonging to the Government, if it does not appear to the ⁵[Provincial Government] to be expedient that he should do so.

¹These words were substituted for the words “*decision of disputes*” for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²This word and figure were substituted for the word and figure “*section 192*” by s. 9 of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

³This reference “*clause (j)*” was substituted for the reference “*clause (i)*” for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁴This proviso was added for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁵See foot-note 3 on p. 589, *ante*.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—Part II.—Settlement of rents, preparation of Settlement Rent-roll, and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.—Sec. 104A.)

104A. (1) For the purposes of settling rents under this Part and preparing a Settlement Rent-roll, the Revenue-officer may proceed in any one or more of the following ways or partly in one of those ways and partly in another, that is to say,—

Procedure for settlement of rents and preparation of Settlement Rent-roll under this Part.

- (a) if in any case the landlord and tenant agree between themselves as to the amount of the rent fairly and equitably payable, the Revenue-officer shall satisfy himself that the rent so agreed upon is fair and equitable, and if he is so satisfied, but not otherwise, it may be settled and recorded as the fair and equitable rent;
- (b) the Revenue-officer may himself propose what he deems to be the fair and equitable rent, and if the amount so proposed is accepted, either orally or in writing, by the tenant, and if the landlord, after notice to attend, raises no objection, the rent so proposed may be settled and recorded as the fair and equitable rent;
- (c) if the circumstances are, in the opinion of the Revenue-officer, such as to make it practicable to prepare a Table of Rates showing for any local area, estate, tenure or village or part thereof, or for each class of land in any local area, estate, tenure or village or part thereof, the rate or rates of rent fairly and equitably payable by tenure-holders and *raiyats* and under-*raiyats* of each class, he may frame a Table of Rates and settle and record all or any of the rents on the basis of such rates in the manner hereinafter described;
- (d) the Revenue-officer may settle all or any of the rents by maintaining the existing rentals recorded in the record-of-rights as published under section 103A, sub-section (1), or by enhancing or reducing such rentals:

Provided that, in making any such settlement, regard shall be had to the principles laid down in sections 6 to 9 (both inclusive), 27 to 36 (both inclusive), 38, 39, 43, 50 to 52 (both inclusive), 180 and 191.

(Chapter X.—Record-of-rights and settlement of rents.—Part II.—Settlement of rents, preparation of Settlement Rent-roll, and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.—Sec. 104B.)

(2) The Settlement Rent-roll shall show the name of each landlord and of each tenant whose rent has been settled, and the amount of each such tenant's rent payable for the area shown against his name.

**Contents of
Table of Rates.**

104B. (1) If a Table of Rates is prepared, it shall specify—

- (a) the class or several classes of land for which, having regard to the nature of the soil, situation, means of irrigation, and other like considerations, it is in the opinion of the Revenue-officer necessary or practicable to fix a rate or different rates of rent; and
- (b) the rate or rates of rent fairly and equitably payable by tenants holding land of each such class whose rent is liable to alteration.

**Local publication
of Table.**

(2) When the Revenue-officer has prepared the Table of Rates, he shall publish it in the local area, estate, tenure or village to which it relates, in the vernacular language prevailing in the district, and in the prescribed manner.

**Revenue-officer
to deal with
objections.**

(3) Any person objecting to any entry in the Table of Rates may present a petition to the Revenue-officer within a period of one month after such publication, and the Revenue-officer shall consider any such objection and may alter or amend the Table.

**Table to be
submitted
to superior
Revenue
authority.**

(4) If no objection is made within the said period of one month, or, where objections are made, after they have been disposed of, the Revenue-officer shall submit his proceedings to the Revenue authority empowered by rule made by the ¹[Provincial Government] to confirm the Tables and Rent-rolls prepared under this Part (hereinafter called the "confirming authority"), with a full statement of the grounds of his proposals, and shall forward any petitions of objection which he may have received.

**Proceedings of
confirming
authority.**

(5) The confirming authority may confirm a Table submitted under sub-section (4), or may disallow the same, or may amend the same in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently made or may return the case for further inquiry.

¹See foot-note 3 on p. 589, ante.

of 1885.]

(Chapter X.—*Record-of-rights and settlement of rents.*—Part II.—*Settlement of rents, preparation of Settlement Rent-roll, and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.*—Secs. 104C—104E.)

(6) When a Table of Rates has been confirmed by the confirming authority, the order confirming it shall be conclusive evidence that the proceedings for the preparation of the Table have been duly conducted in accordance with this Act; and it may be presumed that the rates shown in the Table for tenants of each class, for each class of land, are the fair and equitable rates payable for land of that class within the area to which the Table applies.

Effect of Table.

104C. When a Table of Rates has been confirmed under section 104B, sub-section (5), the Revenue-officer may settle all or any of the rents and prepare the Settlement Rent-roll on the basis of the rates shown in the Table by calculating the rental of each tenure or each holding of a *raiyat* or under-*raiyat* on the area of such tenure or holding at the said rates:

Application
Table of Rates.

Provided that the Revenue-officer shall not be bound to apply the said rates in any particular case in which he may consider it unfair or inequitable to do so.

104D. In framing a Table of Rates under section 104B, and in settling rents under section 104C, the Revenue-officer shall be guided by such rules as the ¹[Provincial Government] may make in this behalf, and shall, so far as may be, and subject to the proviso to the said section 104C, have regard to the general principles of this Act regulating the enhancement or reduction of rents.

Rules and principles to be followed in framing Table of Rates and settling rents in accordance therewith.

104E. (1) When a Settlement Rent-roll for a local area, estate, tenure or village or part thereof has been prepared, the Revenue-officer shall cause a draft of it to be published in the prescribed manner and for the prescribed period, and shall receive and consider any objections made to any entry therein, or omission therefrom, during the period of publication and shall dispose of such objections according to such rules as the ¹[Provincial Government] may ²[make].

Preliminary publication and amendment of Settlement Rent-roll.

¹See foot-note 3 on p. 589, *ante*.

²This word was substituted for the word "prescribe" by s. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter X.—Record-of-rights and settlement of rents.—Part II.—Settlement of rents, preparation of Settlement Rent-roll, and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.—Secs. 104F, 104G.)

(2) The Revenue-officer may, of his own motion or on the application of any party aggrieved, at any time before a Settlement Rent-roll is submitted to the confirming authority under section 104F, revise any rent entered therein :

Provided that no such entry shall be revised until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Final revision of Settlement Rent-roll, and incorporation of the same in the record-of rights.

104F. (1) When all objections have been disposed of under section 104E, the Revenue-officer shall submit the Settlement Rent-roll to the confirming authority with a full statement of the grounds of his proposals and a summary of the objections (if any) which he has received.

(2) The confirming authority may sanction the Settlement Rent-roll, with or without amendment, or may return it for revision :

Provided that no entry shall be amended or omission supplied, until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(3) After sanction by the confirming authority, the Revenue-officer shall finally frame the Settlement Rent-roll and shall incorporate it with the record-of-rights published in draft under section 103A.

Appeal to, and revision by, superior Revenue authorities.

104G. (1) An appeal, if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue-officer prior to the final publication of the record-of-rights on any objection made under section 104B, sub-section (3), or section 104E; and such appeal shall lie to ¹[the prescribed superior Revenue authority].

(2) The Board of Revenue may, in any case under this Part, on application or of its own motion, direct the revision of any record-of-rights, or any portion of a record-of-rights, at any time within two years from the date of the certificate of final publication, but not

¹These words were substituted for the words "such superior Revenue authority as the Local Government may by rule prescribe" by s. 65 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act. IV of 1928).

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—Part II.—Settlement of rents, preparation of Settlement Rent-roll, and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.—Sec. 104H.)

so as to affect any order passed by a Civil Court under section 104H:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

104H. (1) Any person aggrieved by an entry of a rent settled in a Settlement Rent-roll prepared under sections 104A to 104F and incorporated in a record-of-rights finally published under section 103A, or by an omission to settle a rent for entry in such Settlement Rent-roll, may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

Jurisdiction of Civil Courts in matters relating to rent.

(2) Such suit must be instituted within six months from the date of the certificate of final publication of the record-of-rights, or, if an appeal has been presented to a Revenue authority under section 104G, then within six months from the date of the disposal of such appeal.

(3) Such suit may be instituted on any of the following grounds, and on no others, namely:—

- (a) that the land is not liable to the payment of rent;
- (b) that the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;
- (c) that the relation of landlord and tenant does not exist;
- (d) that land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy;
- (e) that the tenancy belongs to a class different from that to which he is shown in the record-of-rights as belonging;
- (f) that the Revenue-officer has not postponed the operation of the settled rent under the provisions of section 110, clause (a), or has wrongly fixed the date from which it is to take effect under that clause;

(Chapter X.—Record-of-rights and settlement of rents.—Part II.—Settlement of rents, preparation of Settlement Rent-roll, and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.—Sec. 104H.)

¹(g) that the special conditions and incidents of the tenancy have not been recorded, or have been wrongly recorded;

¹(h) that any right of way or other easement attaching to the land has not been recorded, or has been wrongly recorded.

²[No such suit shall be brought against the Crown unless the Crown] is landlord or tenant of the land to which the aforesaid entry relates or in respect of which the aforesaid omission was made.

(4) If it appears to the Court that the entry of rent settled is incorrect, it shall in case (a) or case (c) mentioned in sub-section (3), declare that no rent is payable, and shall in any other case settle a fair rent;

and, in any case referred to in clause (f) or clause (g) of the said sub-section (3), the Court may declare the date from which the rent settled is to take effect, or pass such order relating to the entry as it may think fit.

(5) When the Court has declared under sub-section (4) that no rent is payable, the entry to the contrary effect in the record-of-rights shall be deemed to be cancelled.

(6) In settling a fair rent under sub-section (4) the Court shall be guided by the rents of the other tenures or holdings of the same class comprised in the same Settlement Rent-roll, as settled under sections 104A to 104F.

(7) Any rent settled by the Court under sub-section (4) shall be deemed to have been duly settled in place of the rent entered in the Settlement Rent-roll.

¹Clause (g) as originally enacted by the Bengal Tenancy Act, 1885 (VIII of 1885) and clause (h) as inserted by section 24 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, were substituted for clause (g), as modified by section 25 of the Bengal Tenancy (Amendment) Act, 1907, by s. 66 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words were substituted for the words "The Secretary of State for India in Council shall not be made a defendant in any such suit unless the Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—Part II.—Settlement of rents, preparation of Settlement Rent-roll, and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.—Part III.—Settlement of rents and decision of disputes, in cases where a settlement of land-revenue is not being or is not about to be made.—Secs. 104J, 105.)

(8) Save as provided in this section, no suit shall be brought in any Civil Court in respect of the settlement of any rent or the omission to settle any rent under sections 104A to 104F.

(9) When a Civil Court has passed final order or a decree under this section, it shall notify the same to the Collector of the district.

104J. Subject to the provisions of section 104H, all rents settled under sections 104A to 104F and entered in a record-of-rights finally published under section 103A, or settled under section 104G, shall be deemed to have been correctly settled and to be fair and equitable rents within the meaning of this Act.

Presumptions as to rents settled under sections 104A to 104G.

Part III.—Settlement of rents and decision of disputes, in cases where a settlement of land-revenue is not being or is not about to be made.

105. (1) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, either the landlord or the tenant applies, within ²[four months] from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (2), for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent in respect of the land held by the tenant.

Settlement of rents by Revenue-officer in cases where a settlement of land-revenue is not being or is not about to be made.

Explanation.—A superior landlord may apply for a settlement of rent notwithstanding that his estate or tenure or part thereof has been temporarily leased.

¹This section as modified by sections 23 (1) and 25 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, and by the Devolution Act, 1920, was substituted for section 105 as modified by section 24 (1) of the Bengal Tenancy (Amendment) Act, 1907, and by the Devolution Act, 1920, by s. 67 (2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words were substituted for the words "two months" by s. 67 (1)(a), *ibid*

(Chapter X.—Record-of-rights and settlement of rents.—Part III.—Settlement of rents and decision of disputes, in cases where a settlement of land-revenue is not being or is not about to be made.—Sec. 105.)

(2) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, the Revenue-officer has recorded, in pursuance of 'clause (j) of section 102 that the occupant of any land claimed to be held rent-free is not entitled to hold it without payment of rent, and either the landlord or the occupant applies, within ²[four months] from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (2), for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent for the land.

(3) Every application under sub-section (1) or sub-section (2) shall, notwithstanding anything contained in the Court-fees Act, 1870, bear such stamp as the ³[Provincial Government] may ⁴* * * pre-
 VII of 1870.

(4) In settling rents under this section, the Revenue-officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be.

(5) The Revenue-officer may in any case under this section propose to the parties such rents as he considers fair and equitable; and the rents so proposed, if accepted ⁶* * * in writing by the parties, may be recorded as the fair rents, and shall be deemed to have been duly settled under this Act.

(6) Where the parties agree among themselves, by compromise or otherwise, as to the amount of the fair rent, the Revenue-officer shall satisfy himself that the amount agreed upon is fair and equitable, and, if so satisfied, but not otherwise, he shall record the amount so agreed upon as the fair and equitable rent. If not so satisfied, he shall himself settle a fair and equitable rent as provided in sub-sections (4) and (5).

¹The reference "clause (j)" was substituted for the reference "clause (i)", for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907, and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908.

²See foot-note 2 on p. 653, *ante*.

³See foot-note 3 on p. 589, *ante*.

⁴The words "from time to time" were omitted by s. 67 (1) (b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵The words "by notification in the local official gazette" were omitted by s. 67 (1) (b), *ibid*.

⁶The words "orally or" were omitted by s. 67 (1) (c), *ibid*.

of 1885.]

(Chapter X.—*Record-of-rights and settlement of rents.*—Part III.—*Settlement of rents and decision of disputes, in cases where a settlement of land-revenue is not being or is not about to be made.*—Sec. 105A.)

¹(7) Where the lands of the tenancy are included in different local areas for which separate records are framed, the period of limitation specified in sub-section (1) shall begin to run from the date of the certificate of final publication of the last record which contains entries relating to the tenancy.

²105A. Where, in any proceedings for the settlement of rents under this Part, any of the following issues arise:—

Decision of questions arising during the course of settlement of rents under this Part.

- (a) whether the land is, or is not, liable to the payment of rent;
- (b) whether the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;
- (c) whether the relation of landlord and tenant exists;
- (d) whether the land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy;
- (e) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging;
- (f) whether the special conditions and incidents of the tenancy, or any right of way or other easement attaching to the land, have not, or has not, been recorded, or have, or has, been wrongly recorded;
- ³(g) whether the rent payable at the time of final publication of the record-of-rights was correctly entered, and if not, what was the rent payable at that time;

the Revenue-officer shall try and decide such issue and settle the rent under section 105 accordingly:

¹Sub-section (7) was added by s. 25 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²Section 105A was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

³Clause (g) was inserted by s. 68 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter X.—Record-of-rights and settlement of rents.—Part III.—Settlement of rents and decision of disputes, in cases where a settlement of land-revenue is not being or is not about to be made.—Secs. 105B—106.)

Provided that the Revenue-officer shall not try any issue under this section, which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, and has been tried and decided, or is already being tried, by a Revenue-officer in a suit instituted before him under section 106.

Court-fees for raising an issue under section 105A.

¹105B. When any issue is raised under section 105A, the party raising it shall pay, in addition to any other court-fees which he may be liable to pay, such court-fees as he would have been liable to pay if he had claimed relief under section 106.

Costs not to be awarded ordinarily in proceedings under section 105 by Revenue-officer.

¹105C. Except for reasons to be recorded in writing, no Revenue-officer shall award to any party any portion of his costs in a proceeding under section 105.

Institution of suit before a Revenue-officer.

²106. (1) In proceedings under this Part, a suit may be instituted before a Revenue-officer at any time within ³[four months] from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 103A of this Act, by presenting a plaint on stamped paper for the decision of any dispute regarding any entry which a Revenue-officer has made in, or any omission which the said officer has made from, the record,

whether such dispute be between landlord and tenant, or between landlords of the same or of neighbouring estates, or between tenant and tenant, or as to

¹Sections 105B and 105C were inserted by s. 69 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This section 106 (1) was substituted for the original section 106 by s. 4 of the Bengal Tenancy (Validation and Amendment) Act, 1903 (Ben. Act I of 1903). It was renumbered as s. 106 (1) for Eastern Bengal, by s. 27 (1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908). It was also renumbered as s. 106 (1) by s. 70 (1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³These words were substituted for the words "three months" by s. 70 (1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—Part III.—Settlement of rents and decision of disputes, in cases where a settlement of land-revenue is not being or is not about to be made.—Sec. 107.)

whether the relationship of landlord and tenant exists, or as to whether land held rent-free is properly so held, or as to any other matter;

and the Revenue-officer shall hear and decide the dispute:

Provided that the Revenue-officer may, subject to such rules as the ¹[Provincial Government] may ²[make] in this behalf, transfer any particular case or class of cases to a competent Civil Court for trial:

³Provided also that in any suit under this section the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents under this Part, where such issue has been tried and decided, or is already being tried, by a Revenue-officer under section 105A.

⁴(2) Where the lands to which the dispute relates are situated in local areas for which separate records are framed, the period of limitation specified in sub-section (1) shall begin to run from the date of the certificate of final publication of the last record which contains entries relating to such lands.

107. ⁵* ⁶[In all proceedings under section 105, section 105A and section 106,] the Revenue-officer shall, subject to rules made by the ¹[Provincial Government] under this Act, adopt the procedure laid

Procedure to be adopted by Revenue-officer.

¹See foot-note 3 on p. 589, *ante*.

²This word was substituted for the word "prescribe" by s. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³This proviso was added for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁴Sub-section (2) as inserted by s. 27 (3) of the Eastern Bengal and Assam Tenancy (Amendment) Act 1908 (E. B. & A. Act I of 1908), was inserted by s. 70 (2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵The number and brackets "(1)" were omitted by s. 72 (c), *ibid*.

⁶These words and figures were substituted for the words and figures "In all proceedings for the settlement of rents under this Part, and in all proceedings under section 106," for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

[Act VII]

(Chapter X.—Record-of-rights and settlement of rents.—Part III.—Settlement of rents and decision of disputes, in cases where a settlement of land-revenue is not being or is not about to be made.—Secs. 108, 108A.)

down in ¹[the Code of Civil Procedure, 1908,] for the trial of suits; and his decision in every such proceeding shall have the force and effect of a decree of a Civil Court in a suit between the parties, and, subject to the provisions of sections 108 and ²[115C] shall be final. Act V of 1908.

Revision by
Revenue-officer.

108. Any Revenue-officer especially⁴ empowered by the ⁵[Provincial Government] in this behalf, may, on application or of his own motion, within twelve months from the making of any order or decision under

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In section 108, for the word “especially” substitute the word “specially”.
(Substituted by Bengal Act XVI of 1946, section 2 and the First Schedule.)

[No. 41, dated the 22nd July, 1947.]

in the matter.

108A. [Correction by Revenue-officer of mistakes in record-of-rights.] Transferred as section 115B, by s. 74 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

¹These words and figure were substituted for the words “the Code of Civil Procedure” by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This figure and letter were substituted for the figure and letter “109A” by s. 71, *ibid*.

³Sub-section (2) was omitted by s. 72, *ibid*.

⁴*Sic. Read specially.*

⁵See foot-note 3 on p. 589, *ante*.

⁶This word, figure and letter were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁷These words were substituted for the words “is pending” by s. 73 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928.)

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—Part III.—Settlement of rents and decision of disputes, in cases where a settlement of land-revenue is not being or is not about to be made.—Part IV.—Supplemental provisions.—Secs. 109—109B.)

109. Subject to the provisions of section ¹[115C,] a Civil Court shall not entertain any application or suit concerning any matter which is or has already been the subject of an application made, ²[suit instituted or proceedings taken under sections 105 to 108 (both inclusive)]:

Bar to jurisdiction of Civil Courts.

³Provided that nothing contained in this section shall debar a Civil Court from entertaining a suit concerning any matter which—

(a) was the subject-matter of an application under section 105, or section 105A, or of a suit under section 106, if such application or suit has been dismissed for default or withdrawn, or

(b) has not been finally adjudicated upon in any such proceeding or suit.

109A. [Appeals from decisions of Revenue-officers.] Transferred as section 115C, by s. 76 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

Part IV.—Supplemental provisions.

109B. In all proceedings under this chapter, the Revenue-officer may presume that an agreement or compromise made or entered into by any landlord and his tenant is lawful;

Power of Revenue-officer to presume that agreements or compromises are lawful.

but, when the terms of the agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, he shall not give effect to such agreement or compromise until he has given

¹This figure and letter were substituted for the figure and letter "109A" by s. 75 (i) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words and figures were substituted for the words and figures "or suit instituted under section 105, section 106, section 107 or section 108" for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

³This proviso was added by s. 75 (ii) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴Section 109B as inserted by s. 33 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908) was substituted for s. 109B as inserted by s. 33 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) by s. 77 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

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reasonable notice to such third parties to appear and be heard in the matter and unless and until he is satisfied that the statements made by the parties to the agreement or compromise are correct.

Power to
Revenue-officer
to settle rents
on agreement.

109C. (1) Notwithstanding anything contained in section 109B, if in any case while the record is being prepared, the landlord and tenant agree as to the rent which shall be recorded as payable for the tenure or holding,

a Revenue-officer * * * * * may, if he is satisfied that the rent agreed upon is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such, that, if they were embodied in a contract, they could not be enforced under this Act;

and the provisions of section 113 shall apply to a rent so settled.

(2) A landlord or tenant may appeal to the Special Judge appointed under section ⁵[115C], on the ground that the rent settled by the Revenue-officer, under subsection (1), as a fair and equitable rent, was not agreed to by such landlord or tenant, and on no other ground.

(3) The Board of Revenue may, on application made, or of its own motion in proceedings undertaken, within one year from the date of the order, under subsection (1), settling a rent as a fair and equitable rent, direct the revision of the rent so settled:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Note of decisions
on record.

109D. A note of all rents settled under section 105, of all decisions of issues under section 105A or section 106 and of all orders regarding the same on appeal or revision under section 108 or section 115C

⁵Section 109C as inserted by s. 33 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) was inserted after s. 109B by s. 78 (2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶The words "specially empowered in this behalf by the Local Government" were omitted by s. 78 (1) (a), *ibid.*

⁷This figure and letter were substituted for the figure and letter "109A" by s. 78 (1) (b), *ibid.*

⁸Section 109D was substituted for s. 109D as inserted by s. 33 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) and for section 109C as inserted by s. 33 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908) by s. 79 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—
Part IV.—Supplemental provisions.—Secs. 110,
111.)

shall be made in, or appended to, the record-of-rights finally published under sub-section (2) of section 103A, and such note shall be considered as part of the record.

110. When a rent is settled by a Revenue-officer under this chapter, it shall take effect from the beginning of the agricultural year next after the date of the decision fixing the rent or (if a settlement of land-revenue is being or is about to be made) the date of final publication of the ¹[record-of-rights]:

Date from which settled rent takes effect.

Provided as follows:—

- (a) if the land is comprised in an area, estate or tenure in respect of which a settlement of land-revenue is being or is about to be made, the rent settled shall, subject to the provisions of ²[section 191] take effect from the expiration of the period of the current settlement, or from such other date after the expiration of that period as may be fixed by the Revenue-officer;
- (b) if the land is not comprised in an area, estate or tenure as aforesaid, and if the existing rent has been fixed by a contract binding between the parties for an unexpired term of years, the rent settled shall take effect from the expiration of that term, or from such other date after the expiration of that term as may be fixed by the Revenue-officer.

111. When an order has been made under section 101, directing the preparation of a record-of-rights, then, subject to the provisions of section 104H, a Civil Court shall not,—

Stay of proceedings in Civil Court during preparation of record-of-rights.

- (a) where a settlement of land-revenue is being or is about to be made—until after the final publication of the record-of-rights, and
- (b) where a settlement of land-revenue is not being made or is not about to be made—until ³[four months] after the final publication of the record-of-rights,

¹These words were substituted for the words "settlement rent-roll" by s. 80 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This word and figure were substituted for the words and figures "sections 191 and 192" by s. 28 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

³These words were substituted for the words "three months" by s. 81 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV 1928).

The Bengal Tenancy Act, 1885.

[Act VIII]

*(Chapter X.—Record-of-rights and settlement of rents.—
Part IV.—Supplemental provisions.—Secs. 111A,
111B.)*

entertain ¹[any application made under section 158, or] any suit or application for the alteration of the rent or the determination of the status of any tenant, in the area to which the record-of-rights applies.

Limitation of jurisdiction of Civil Courts in matters, other than rent, relating to record-of-rights.

111A. No suit shall be brought in any Civil Court in respect of any order directing the preparation of a record-of-rights under this chapter or in respect of the framing, publication, signing or attestation of such a record or of any part of it, or, save as provided in section 104H, for the alteration of any entry in such a record of a rent settled under sections 104A to 104F :

Provided that any person who is dissatisfied with any entry in, or omission from, a record-of-rights framed in pursuance of an order made under section 101, sub-section (2), clause (d), which concerns a right of which he is in possession, may institute a suit for declaration of his right under Chapter VI of the Specific Relief Act, 1877. 1 of 1877.

Stay of suits in which certain issues arise.

111B. (1) Where a record-of-rights has been prepared and finally published in respect of the land in any area in which a settlement of land-revenue is not being made, or is not about to be made, no application or suit affecting such land or any tenant thereof shall, within ³[four months] from the date of the certificate of final publication of such record-of-rights, be made or instituted in any Civil Court for the decision of any of the following issues, namely:—

- (a) whether the land is or is not liable to the payment of rent;
- (b) whether the relation of landlord and tenant exists;
- (c) whether the land is part of a particular estate or tenancy; or
- (d) whether there is any special condition or incident of the tenancy, or whether any right of way or other easement attaches to the land.

¹These words were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²Section 111B as inserted by s. 35 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908) was substituted for s. 111B, as inserted by s. 35 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by s. 82 (2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³These words were substituted for the words "three months" by s. 82 (1), *ibid.*

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(Chapter X.—Record-of-rights and settlement of rents.—
Part IV.—Supplemental provisions.—Sec. 112.)

(2) If, before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues mentioned in sub-section (1) has been instituted in a Civil Court, the Revenue-officer shall not, in a suit under section 106 or in proceedings under section 105A, try such issue unless in such civil suit such issue is not in fact tried or decided.

(3) Where, in the course of settling fair rents under section 105, the Revenue-officer finds that, by reason of a suit involving the decision of any of the issues mentioned in sub-section (1) having been instituted in a Civil Court before the final publication of the record-of-rights, or before a Revenue-officer under section 106, is unable to settle a fair rent until such issue is decided, the Revenue-officer shall stay the proceedings, for the settlement of a fair rent, pending a final decision on the issue;

and, after the issue has been finally decided, he shall settle a fair rent, as if the record-of-rights had been framed in accordance with such decision.

(4) Where the making of an application or institution of a suit has been delayed owing to the operation of sub-section (1), the period of ¹[four months] therein mentioned shall be excluded in computing the period of limitation prescribed for such suit or application.

112. (1) The ²[Provincial Government] may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare,

* * * Power to authorize special settlement in special

⁴[or that any landlord is demanding or exacting rents in excess of the rents entered as payable in a record-of-rights prepared under this chapter, or of the rents payable by reason of enhancements lawfully made after the final publication of such record, invest a Revenue-officer]

¹These words were substituted for the words "three months" by s. 82 (1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²See foot-note 3 on p. 589, *ante*.

³The words "with the previous sanction of the Governor General in Council" which were repealed by the Devolution Act, 1920 (XXXVIII of 1920), are omitted.

⁴These words as inserted by s. 36 (1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908) were substituted by s. 83 (1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter X.—Record-of-rights and settlement of rents.—
Part IV.—Supplemental provisions.—Sec. 113.)

with the following powers or either of them, namely:—

- (a) power to settle all rents;
- (b) power, when settling rents, to reduce rents if, in the opinion of the officer, the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exercisable within a specified area either generally or with reference to specified cases or classes of cases.

¹(2a) A settlement of rents under this section shall be made in the manner provided by sections 104 to 104J (both inclusive).

²(2b) If any rent other than rent for which a decree has already been obtained is in arrear in respect of a tenancy at the time when a settlement of rents is made under this section, such arrear shall not be recoverable in any Court in so far as it exceeds the amount which would have been due as rent of the tenancy had the settlement of rent taken place at the commencement of the period for which such rent is claimed.

Period for which
rents as settled
are to remain
unaltered.

113. (1) When the rent of a tenure or holding is settled under this chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding or the holding of an under-*raiyat* having occupancy rights, for fifteen years, and, in the case of a non-occupancy holding or the holding of an under-*raiyat* not having occupancy rights, for five years; and no such rent shall be reduced within the periods aforesaid save on the ground of alteration in the area of the holding or on the ground specified in section 38, clause (a).

¹Sub-section (2a) was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²Sub-section (2b) was inserted by s. 83 (2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³Sub-section (3) was omitted by the Devolution Act, 1920 (XXXVIII of 1920).

[1885.]

(Chapter X.—Record-of-rights and settlement of rents.—

Part IV.—Supplemental provisions.—Sec. 114.)

(2) The said periods of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this chapter.

114. (1) When the preparation of a record-of-rights has been directed or undertaken under this chapter, in any case except where a settlement of land-revenue is being or is about to be made, the expenses incurred ¹* * * in carrying out the provisions of this chapter in any local area, estate, tenure or part thereof (including expenses that may be incurred ²[at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration] of boundary marks and other survey marks erected for the purpose of carrying out the provisions of this chapter), or such part of those expenses as the ³[Provincial Government] may direct, shall be defrayed by the landlords, tenants and occupants of land in that local area, estate, tenure or part in such proportions ⁴[and in such instalments (if any)] as the ³[Provincial Government], having regard to all the circumstances, may determine.

Expenses of proceedings under this chapter.

⁵(2) The estimated amount of the expenses likely to be incurred for the maintenance, repair or restoration of boundary marks for a period not exceeding fifteen years, or such part of such amount as the ³[Provincial Government] may direct, may be recovered in advance in the same manner as if such expenses had been already incurred.

¹The words "by the Government" which were repealed, in Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, in Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), are omitted.

²These words were substituted for the words "from time to time in the maintenance", for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

³See foot-note 3 on p. 589, *ante*.

⁴These words were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁵Sub-section (2) was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

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Part IV.—Supplemental provisions.—Secs. 115—
115B.)

¹(3) The portion of the aforesaid expenses which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part.

²(4) The cost of preparing copies of survey maps and records-of-rights under this chapter for distribution to landlords and tenants shall be deemed to be part of the expenses incurred in carrying out the provisions of this chapter.

Explanation.—The word “tenure” in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

Presumption as to fixity of rent not to apply where record-of-rights has been prepared.

Demarcation of village boundaries.

115. When the particulars mentioned in section 102, clause (b), have been recorded under this chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

³**115A.** In the demarcation of village boundaries for the purpose of making a survey and preparing a record-of-rights under this chapter, a Revenue-officer shall so far as is possible, and subject to the provisions of the Bengal Survey Act, 1875, preserve, as the unit of survey and record, the area contained within the exterior boundaries of the village maps of the revenue survey, or other survey, if any, adopted under clause (19) (b) of section 3 as defining villages;

Ben. Act
V of 1875.

and, where village maps prepared at such revenue or other survey exist, he shall not, without the sanction of the Board of Revenue, adopt any other area as such unit.

⁴**115B.** Any Revenue-officer specially empowered by the “[Provincial Government] in this behalf may, on

Correction by Revenue-officer of mistakes in record-of-rights.

¹The original sub-section (2) was re-numbered as sub-section (3), for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²Sub-section (4) was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

³Section 115A as inserted by section 38 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908) was substituted for section 115A as inserted by s. 38 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) by s. 84 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴This was formerly s. 108A. It was transferred as s. 115B by s. 74 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵See foot-note 3 on p. 589, ante.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—
Part IV.—Supplemental provisions.—Sec. 115C.)

application or of his own motion, within ¹[two years] from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 103A, correct any entry in such record-of-rights which he is satisfied has been made owing to a *bona fide* mistake:

Provided that no such correction shall be made if an appeal affecting such entry ²[has been filed] under section ³[115C] or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

115C. (1) The ⁴[Provincial Government] shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under sections 105 to 108 (both inclusive) ⁵[and section 115B.]

Appeals from
decisions of
Revenue-officers.

Act V of
1908.

(2) An appeal shall lie to the Special Judge from the decisions of a Revenue-officer under sections ⁶[105 to 108 (both inclusive), and section 115B], and the provisions of ⁷[the Code of Civil Procedure, 1908], relating to appeals shall, as nearly as may be, apply to all such appeals.

(3) Subject to the provisions of ⁸[sections 100 to 103, section 107, section 108 and section 144 of, and Order XLII in Schedule I to the Code of Civil Procedure, 1908] an appeal shall lie to the High Court from the decision of a Special Judge in any case under this section (not being a decision settling a rent) as if

¹These words were substituted for the words "twelve months" by s. 74 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words were substituted for the words "is pending" by s. 74, *ibid.*

³This figure and letter were substituted for the figure and letter "109A" by s. 74, *ibid.*

⁴This was formerly s. 109A. It was transferred as s. 115C by s. 76, *ibid.*

⁵See foot-note 3 on p. 589, *ante*.

⁶These words, figure and letter were inserted by s. 76(1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁷These figures, words and letter were substituted for the figures, words and letter "105 to 108A (both inclusive)" by s. 76, *ibid.*

⁸These words and figure were substituted for the words "the Code of Civil Procedure" by s. 128, *ibid.*

⁹These words, figures and letters were substituted for the words and letters "Chapter XLII of the Code of Civil Procedure" by s. 128, *ibid.*

[Act VIII]

(Chapter XI.—Non-accrual of occupancy and non-occupancy rights and record of proprietors' private lands.—Sec. 116.)

he were a Court subordinate to the High Court within the meaning of ¹[section 100 of that Code]:

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained under section 102 or settled under section 105 or section 108.

CHAPTER XI.

²[NON ACCRUAL OF OCCUPANCY AND NON-OCCUPANCY RIGHTS AND] RECORD OF PROPRIETOR'S PRIVATE LANDS.

Savings as to
certain lands.

116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, ³lands acquired under the Land Acquisition Act, 1894, for ⁴[the Crown] or for any local authority or for a Railway Company, or lands belonging to ⁴[the Crown] within a Cantonment, while such lands remained the property of ⁴[the Crown], or of any local authority or Railway Company, ⁵[or lands owned by ⁴[the Crown] or by any local authority which are used

I of 1894.

¹These words and figure were substituted for the words "the first section of that Chapter" by section 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words were prefixed to this heading, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

³The words "lands acquired under the Land Acquisition Act, 1894, for the Government or for any local authority or for a Railway Company, or lands belonging to the Government within a cantonment, while such lands remained the property of the Government, or of any local authority or Railway Company, or to" in section 116 were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁴These words were substituted for the words "the Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were inserted by s. 85(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

The Bengal Tenancy Act, 1885.

of 1885.]

(Chapter XI.—Non-accrual of occupancy and non-occupancy rights and record of proprietors' private lands.—Secs. 117—120.)

for any public work, such as a road, canal or embankment, or are required for the repair or maintenance of the same,] or to a proprietor's private lands ¹[known as *khamar*, *nij*, *nij-jot*, *zirāat*, *sir* or *khamat*] where any such land is held under a lease for a term of years or under a lease from year to year.

117. The ²[Provincial Government] may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of ³[section 116].

Power for Government to order survey and record of proprietor's private lands.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to, and in accordance with, rules made in this behalf by the ²[Provincial Government], ascertain and record whether the land is or is not a proprietor's private land.

Power for Revenue-officer to record private land on application of proprietor or tenant.

119. When a Revenue-officer proceeds under ⁴[section 117 or 118] the provisions of ⁵section 103A, 103B, 106, 107, 108, 109 and ⁶[115C] shall apply.

Procedure for recording private land.

120. (1) The Revenue-officer shall record as a proprietor's private land—

Rules for determination of proprietor's private land.

(a) land which is proved to have been cultivated as *khamar*, *zirāat*, *sir*, *nij*, *nij-jot* or

¹These words were substituted for the words "known in Bengal as *khamar*, *nij* or *nij-jot*, and in Bihar as *zirāat*, *nij*, *sir*, or *khamat*" by s. 85 (b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²See foot-note 3 on p. 589, *ante*.

³This word and figure were substituted for the words "the last foregoing section" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴These words and figures were substituted for the words "either of the two last foregoing sections" by s. 126, *ibid*.

⁵The words, figures and letters "sections 103A, 103B, 106, 107, 108, 109 and 109A" in section 119 were substituted for the words and figures "sections 105 to 109, both inclusive," by s. 10 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

⁶This figure and letter were substituted for the figure and letter "109A" by s. 71 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter XII.—Distraint—Secs. 121 to 142.)

¹[*khamat*] by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(b) cultivated land which is recognized by village usage as proprietor's *khamar*, *zirāat*, *sir*, *nij*, *nij-jot* or ¹[*khamat*].

(2) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was, before the second day of March, 1883, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

²(2a) Notwithstanding anything contained in any agreement or compromise, or in any decree which is proved to his satisfaction to have been obtained by collusion or fraud, a Revenue-officer shall not record any land as a proprietor's private land, unless it is proved to be such by satisfactory evidence of the nature described in sub-section (1) or sub-section (2).

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

CHAPTER XII.

Distraint.

121 to 142. *Rep. by s. 87 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).*

¹This word was substituted for the word "*kamat*" by s. 86 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Sub-section (2a) was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

of 1908.]

(Chapter XIII.—Judicial procedure.—Secs. 143, 144.)

CHAPTER XIII.

JUDICIAL PROCEDURE.

Act V of
1908.

143. (1) The High Court may, from time to time, with the approval of the ¹[Provincial Government] make rules, consistent with this Act, declaring that any portions of ²[the Code of Civil Procedure, 1908,] shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

Power to modify
Civil Procedure
Code in its
application to
landlord and
tenant suits.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, ²[the Code of Civil Procedure, 1908,] shall apply to all such suits.

144. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of ²[the Code of Civil Procedure, 1908,] be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought ³[and no suit between landlord and tenant as such shall be instituted in any Court other than a Court within the local jurisdiction of which the lands of the tenure or holding, as the case may be, are wholly or partly situated.]

Jurisdiction in
proceedings
under Act.

“(2) A landlord may institute one suit in respect of the rent of more than one tenancy, if the tenancies, in respect of the rent of which the suit is brought, are held in similar right and equal status by the same tenant under him:

Provided that—

- (i) the claim in respect of each tenancy shall be stated separately in the plaint;
- (ii) separate decrees shall be made in respect of each tenancy;
- (iii) the costs of the suit shall be apportioned by the Court in respect of each tenancy; and
- (iv) separate court-fees shall be levied on the plaint in respect of the claim on account of each tenancy; and

¹These words were substituted for the words “Governor General in Council” by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words and figure were substituted for the words “the Code of Civil Procedure” by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³These words were inserted by s. 88(a), *ibid.*

⁴Sub-section (2) was inserted by s. 88(b), *ibid.*

(Chapter XIII.—Judicial procedure.—Secs. 145—146A.)

¹(3) When under this Act a civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

Naibs or Gumashas to be recognized agents.

145. Every *naib* or *gumashta* of a landlord empowered in this behalf by a written authority under the hand of the landlord, shall, for the purposes of every such suit or application, be deemed to be the recognized agent of the landlord within the meaning of ²[the Code of Civil Procedure, 1908,] notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made:

Act V of 1908.

³Provided that notwithstanding anything contained in the Code of Civil Procedure, 1908, every such *naib* or *gumashta* may verify the pleadings on behalf of the landlord and shall not be required to obtain the permission of the Court for the purpose of such verification.

Special register of suits.

146. The particulars ⁴[mentioned in rule 1 of Order VII in Schedule I to the Code of Civil Procedure, 1908,] shall, in the case of such suits, instead of being, entered in the register of civil suits prescribed by ⁵[rule 2 of Order IV in Schedule I to the said Code,] be entered in a special register to be kept by each Civil Court, in such form as the ⁶[Provincial Government] may, from time to time, prescribe in this behalf.

Joint and several liability for rent of co-sharer tenants in a tenure or holding.

⁷**146A.** (1) Notwithstanding anything contained in the Indian Contract Act, 1872, all co-sharer tenants in a tenure or holding and their successors in interest shall be liable to the landlord jointly and severally for the rent payable to such landlord on account of the tenure or holding, whether such rent has accrued during the time of their own occupation or during the time of the occupation of their predecessors in interest.

IX of 1872.

¹Sub-section (2) was re-numbered as sub-section (3) by s. 89(c) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words and figure were substituted for the words "the Code of Civil Procedure" by s. 128, *ibid.*

³This proviso was added by s. 89, *ibid.*

⁴These words and figures were substituted for the words "referred to in section 58 of the Code of Civil Procedure" by s. 128, *ibid.*

⁵These words and figures were substituted for the words "that section" by s. 128, *ibid.*

⁶See foot-note 3 on p. 589, *ante*.

⁷Sections 146A and 146B were inserted by s. 90 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter XIII.—Judicial procedure.—Sec. 146B.)

(2) Notwithstanding anything contained elsewhere in this Act or in any other law a decree for arrears of rent of a tenure or holding and a sale in execution of such decree shall be valid against all the co-tenants, whether they have been made parties defendant to the suit or not and against the holding in the manner provided in Chapter XIV, if the defendants to the suit represented the entire body of co-sharer tenants in the tenure or holding for the rent of which the suit was brought.

(3) The entire body of co-sharer tenants in a tenure or holding shall for the purposes of sub-section (2) be deemed to be represented by the defendants to the suit if such defendants include—

- (i) all the co-sharer tenants in the tenure or holding whose homestead are situated in the village in which the tenure or holding is situated;
- (ii) such of the co-sharer tenants in the tenure or holding, as have, at any time during the three years previous to that for the rent of which the suit is brought, made any payment of rent for the tenure or holding;
- (iii) such co-sharer tenants who having purchased an interest in the tenure or holding, have given notice of the purchase under sub-section (3) of section 12, or ¹[section 26C ²* *] as the case may be, or, who having succeeded to an interest by inheritance have given notice of their succession under section 15; and
- (iv) all other co-sharer tenants in the tenure or holding whose names are entered in the landlord's rent-roll.

IX of
1908.

³146B. (1) Notwithstanding anything contained in the Indian Limitation Act, 1908, any person who claims that he should have been joined as a co-sharer tenant defendant in a suit for the recovery of arrears of rent due in respect of a tenure or holding may at any time before the hearing of the suit has been commenced apply to be made a party defendant to the suit, and the Courts shall consider his claim, and if it finds that he should have been so joined shall join him as a party defendant:

Procedure in
rent suit against
co-sharer tenants
in a tenure or
holding.

¹The words, figures and letters "section 26 or section 26E" were substituted for the words, figures and letters "section 26E or section 26F" by s. 10 of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

²The words, figure and letter "or section 26E" were omitted by s. 29 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938.)

³See foot-note 7 on p. 672, *ante*.

(Chapter XIII.—Judicial procedure.—Sec. 147.)

Provided that if any such person at any time in the course of such suit pays into Court the full amount of the claim together with such costs as the Court may direct, the suit shall be dismissed and in any such case the provisions of section 171 shall apply.

(2) The provisions of sub-sections (2) and (3) of section 146A shall, so far as may be, apply in the case of a co-sharer tenant joined as a defendant under sub-section (1) of this section.

Successive
rent suits.

147. ¹[(1)] Subject to the provisions of ²[rule 1 of Order XXIII in Schedule I to the Code of Civil Procedure, 1908,] where a landlord has instituted a suit against a *raiyat* for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after ³[nine] months from the date of the institution of the previous suit.

Act V of
1908.

* * * * *

⁴(2) Nothing in sub-section (1) nor in rule 2 of Order II in Schedule I to the Code of Civil Procedure, 1908, shall be deemed to prevent a landlord instituting a suit for a portion of the arrears of rent in respect of a holding, provided that—

- (a) the claim in such suit shall be for the rent or the balance of the rent due for a complete agricultural year or years; and
- (b) the plaint shall contain in addition to the particulars specified in clause (b) of section 148, the total claim which might have been made on the date of the institution of the suit, and the period to which the said total claim relates.

⁵(3) Where a subsequent suit for rent is instituted by a co-sharer landlord and has been consolidated with a previous suit for rent under the provisions of sub-section (4) of section 148A, the date of the institution of the subsequent suit shall, for the purposes of this section, be deemed to be the date of the suit which was first instituted and with which it was consolidated.

¹Section 147 was re-numbered as sub-section (1) of section 147 by s. 30(1) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938.)

²These words and figures were substituted for the words and figure "section 373 of the Code of Civil Procedure" by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³This word was substituted for the word "three" by s. 30 (1) (a) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938.)

⁴The proviso was omitted by s. 30 (1) (b), *ibid.*

⁵Sub-sections (2) and (3) were added by s. 30 (2), *ibid.*

of 1885.]

(Chapter XIII.—Judicial procedure.—Sec. 147A.)

¹**147A.** ²(1) Notwithstanding anything contained in ³[rule 3 or Order XXIII in Schedule I to the Code of Civil Procedure, 1908,] if any suit between landlord and tenant as such is wholly or partly adjusted by agreement or compromise, the Court ⁴[shall not order an agreement or compromise to be recorded and] shall not pass a decree in accordance with such agreement or compromise unless it is satisfied, for reasons to be recorded in writing, that the terms of such agreement or compromise are such that, if embodied in a contract, they could be enforced under this Act:

Compromise of suits between landlord and tenant.

Provided that, in the case of a suit instituted by the landlord to enhance the rent, the enhancement, if any agreed upon may be decreed if the Court be satisfied, for reasons to be recorded in writing, that such enhancement is fair and equitable and in accordance with the rules laid down in this Act for the guidance of Courts in increasing rents.

⁵(2) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Court shall not pass a decree in accordance with such agreement or compromise, unless and until it is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration.—A, a proprietor, agrees that B, his tenant, shall be recorded as an occupancy-*raiyat*; this affects the rights of the tenants of B. The Court must, under ⁶[this sub-section], inquire whether B is a tenure-holder or a *raiyat* as defined in section 5. If the Court finds on the evidence that B is a *raiyat*, it may pass a decree in accordance with the agreement, but shall not do so if it finds that B is a tenure-holder.

¹Section 147A as inserted by section 42 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), was substituted for s. 147A as inserted by s. 42 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by s. 92(4) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Sub-section (1) which was s. 147A as inserted by s. 42 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), was re-numbered as sub-section (1), by s. 92 (2), *ibid.*

³These words and figures were substituted for the words and figure "section 373 of the Code of Civil Procedure" by s. 92(1) (a), *ibid.*

⁴These words were inserted by s. 92 (1) (b), *ibid.*

⁵Sub-section (2) with the illustration which was formerly sub-section (4) of s. 147A as inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), was inserted and numbered as sub-section (2) by s. 92 (3) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶These words were substituted for the words and figure "sub-section (4)" by s. 92 (3), *ibid.*

(Chapter XIII.—Judicial procedure.—Secs. 147B, 148.)

Regard to be
had by Civil
Courts to entries
in record-of-
rights.

¹**147B.** In all areas for which a record-of-rights has been prepared and finally published under sub-section (2) of section 103A, a Civil Court shall, in all suits between landlord and tenant as such, have regard to the entries in such record-of-rights relating to the subject-matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect; and, when a Civil Court passes a decree at variance with such entries, it shall record its reasons for so doing.

Procedure in
rent suits.

²**148.** The following rules shall apply to suits for the recovery of rent:—

³(a) sections 68 to 72 of the Code of Civil Procedure, 1908, and rules 1 to 13 of Order XI, rule 83 of Order XXI and rule 2 of Order XLVIII in Schedule I to the said Code, and Schedule III to the said Code, shall not apply to any such suit;

Act V of
1908.

(b) the plaint shall contain, in addition to the particulars specified in ⁴[rules 1, 2, 4, 5 and 6 and sub-rule (2) of rule 9 of Order VII in Schedule I to the Code of Civil Procedure, 1908,] a statement of the situation, designation, extent and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries in lieu thereof a description sufficient for ⁵[identification. The plaint] ⁶[shall further contain a statement whether a record-of-rights has been prepared and finally published in respect of such land];

⁷(c) where the suit is for the rent of land situated within an area for which a record-of-rights has been finally published, the plaint shall contain a statement of the serial number or numbers borne by the tenancy in the record-

¹ Section 147B was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908.)

² The clauses of this section were renumbered by s. 129 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³ Clause (a) was substituted for the former clause by s. 93 (1), *ibid.*

⁴ These words and figures were substituted for the words and figure "section 50 of the Code of Civil Procedure" by s. 93 (2) (i), *ibid.*

⁵ These words were substituted for the words "identification and the plaint" by s. 31(1) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁶ These words were inserted by s. 93 (2) (ii) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁷ Clause (c) was formerly numbered (b1). This clause as inserted by s. 43 (1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, was substituted for clause (b1) as inserted by s. 43(1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by s. 93 (4), *ibid.*

of 1895.]

(Chapter XIII.—Judicial procedure.—Sec. 148.)

of-rights, and of the area and rental of the tenancy according to such record, unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such statement :

Provided that, in all cases in which the Court admits a plaint which does not contain such statement, the Court shall, and in any other case in which it sees fit the Court may require the Collector to supply, without payment of fee, a verified or certified copy of, or extract from, the record-of-rights relating to the tenancy.

¹Provided also that, when the plaint contains such a statement, no statement of the situation, designation, extent and boundaries of the land held by the tenant referred to in clause (b) shall be required, except in so far as may be necessary for the purposes of clause (d);

²(d) where any changes have occurred in the area, survey plots, or rent of the tenancy since the record-of-rights was finally published, the plaint shall further contain a statement shewing the particulars of such changes;

³(e) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only;

⁴(f) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under

⁵[Chapter VI of the Indian Post Office Act, 1898];

VI of 1898.

¹This proviso was substituted for the second proviso to clause (b1) as formerly numbered, by s. 93(3) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Clause (d) was formerly numbered (b2). It was substituted for former clause (b2) by s. 93 (5), *ibid*.

³Clause (e) was formerly numbered (c).

⁴Clause (f) was formerly numbered (d).

⁵These words and figures were substituted for the words and figures "Part III of the Indian Post Office Act, 1866" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

[Act VIII]

(Chapter XIII.—Judicial procedure.—Sec. 148.)

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered the Court may presume that the summons has been duly served;

- ¹(g) notwithstanding anything contained in the Code of Civil Procedure, 1908, or any rules made thereunder the plaintiff in a suit for recovery of arrear of rent shall not be required to supply any identifier for the purpose of serving the summons on the defendant or on any witness, and the serving officer shall serve the summons after due inquiry as to the identity of the person on whom, or the house or property where, the summons is served. The serving officer shall serve the summons in the presence of at least two persons and he shall, whenever possible, require the signature of those persons to be endorsed on the original summons and, where he is unable to serve the summons, he shall, whenever possible, require the signatures of two persons of the locality to be so endorsed;
- ²(h) notwithstanding anything contained in rule 4 (3) of Order XXXII in Schedule I to the Code of Civil Procedure, 1908, the Court may serve on the natural guardian of a minor defendant in a suit for arrears of rent a notice informing him that he will be treated as the guardian of such defendant in respect of such suit, unless he appears and objects within such time, not being less than fourteen clear days after the service of the notice, as may be specified in the said notice, and, in default of compliance with such notice, such natural guardian shall, unless the Court otherwise directs, be deemed to be the duly appointed guardian of the said minor defendant for all the purposes of such suit;
- ³(i) a written statement shall not be filed without the leave of the Court, ⁴[but the Court shall record its reasons for granting or refusing such leave;]

Act V of
1908.

¹Clause (g) was formerly numbered (d1). It was inserted by s. 93 (6) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Clause (h) was formerly numbered (d2). It was inserted by s. 93 (6) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³Clause (i) was formerly numbered (e).

⁴These words were inserted by s. 93 (7) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter XIII.—Judicial procedure.—Sec. 148.)

Act V of
1908.

¹(j) the rules for recording the evidence of witnesses²[contained in rule 13 of Order XVIII in Schedule I to the Code of Civil Procedure, 1908,] shall apply, whether an appeal is allowed or not;

³(k) (i) notwithstanding anything contained in the Code of Civil Procedure, 1908, where a suit is instituted for rent entered in a record-of-rights finally published under Chapter X or where the rent is payable under a registered lease between the landlord and the tenant or where the annual rent payable has been decreed in a previous suit between the landlord and the tenant, the Court may, if the plaintiff desires to proceed under this section, issue a special summons in the prescribed form;

VI of 1898.

⁴(ia) service of the special summons referred to in sub-clause (i) shall ordinarily be effected by forwarding the summons by post in a letter with acknowledgment due addressed to the defendant and registered under Chapter VI of the Indian Post Office Act, 1898; and when a summons is so forwarded, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served;

(ii) when a special summons⁵ [referred to in sub-clause (i) has been served] if the defendant fails to appear and defend the suit, the allegations in the plaint as regards the rent due shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons together with interest at the rate of six per cent. *per annum* from the date of the suit up to the date of payment and for costs with interest thereon:

Provided that the Court may at its discretion in any case in which it thinks fit, direct the plaintiff to adduce evidence in support of his claim:

¹Clause (i) was formerly numbered (f).

²These words were substituted for the words "prescribed by section 189 of the Code of Civil Procedure" by s. 93 (8) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³Clause (k) was formerly numbered (f). This clause was inserted by s. 93 (9), *ibid.*

⁴Sub-clause (ia) was inserted by s. 31 (2) (a) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁵These words were substituted for the words "has been issued under sub-clause (i)" by s. 31 (2) (b), *ibid.*

(Chapter XIII.—Judicial Procedure.—Sec. 148.)

Provided also that notwithstanding anything contained in section 13 of the Indian Evidence Act, 1872, where a decree has been passed under this clause, no statement in the plaint regarding the nature, area and incidents of the tenancy or regarding any liability other than the rent claimed as due shall be evidence against the tenant in any subsequent suit or proceeding; I of 1872.

(iii) within seven days after the passing of a decree under sub-clause (ii) the Court shall send at the cost of the plaintiff to the defendant or defendants against whom the decree has been passed a registered postcard in the prescribed form stating the particulars contained in the decree ¹[and no action in execution of a decree shall be taken until a period of sixty days has elapsed since the date of the decree];

²(iia) notwithstanding anything contained in section 34 of the Code of Civil Procedure, 1908, no interest shall be payable from the date of the decree on the aggregate sum decreed, if such aggregate sum is paid in full by the judgment-debtor within sixty days from date of the decree; Act V of 1908.

(iv) notwithstanding anything contained in rule 13 of Order IX in Schedule I to the Code of Civil Procedure, 1908, or in section 153A of this Act, where a decree is passed *ex parte* against a defendant under sub-clause (ii), he may apply to the Court by which the decree was passed for an order to set aside the decree and the Court, if it is satisfied that summons was not duly served and that there is *prima facie* evidence of a *bonâ fide* defence, may * * * make an order setting aside the decree as against him or if necessary against all or any of the other defendants also;

⁴(l) when any accounts-books, rent-rolls, collection-papers, measurement-papers, maps or extracts

¹These words were inserted by s. 31 (2) (c) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²Sub-clause (iia) was inserted by s. 31 (2) (d), *ibid*.

³The words "upon his depositing one half of the amount recoverable under the decree" were omitted by s. 31 (2) (e), *ibid*.

⁴Clause (l) was formerly numbered (ff). This clause as inserted by s. 43 (2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), was substituted for clause (ff) as inserted by s. 43(2) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by s. 93(10) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

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(Chapter XIII.—Judicial Procedure.—Sec. 148.)

from records-of-rights have been produced by '[a party] before any Court, and have been admitted in evidence in a suit pending therein,

copies of, or extracts from, such documents, ¹may be] certified by a duly authorized officer of such Court to be true copies or extracts ²[without the payment of any court-fee, and such copies or extracts], may, with the permission of the Court, be substituted on the record for the originals, which may then be returned to '[the party],

and thereafter copies and extracts, so certified, may be admitted in evidence in any other suit instituted in the same or any other Court, unless the Court before which they are produced sees fit to require the production of the originals;

³(m) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears;

⁴(n) notwithstanding anything contained in sub-rule (3) of rule 11 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, the Court shall not, unless for special reasons to be recorded in writing, direct the decree-holder to file a copy of the decree or any fresh *vakalatnama* for the purpose of executing the decree:

⁵(o) notwithstanding anything contained in "[rule 16 of Order XXI in Schedule I to the Code of Civil Procedure, 1908,] an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

¹These words were substituted for the words "the landlord" by s. 93 (10) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words were inserted, *ibid*.

³Clause (m) was formerly numbered (g).

⁴Clause (n) was formerly numbered (gg). It was inserted by s. 93(11) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵Clause (o) was formerly numbered (h).

⁶These words and figures were substituted for the words and figure "section 232 of the Code of Civil Procedure" by s. 93 (12) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter XIII.—Judicial procedure.—Sec. 148A.)

Power to
co-sharer
landlord to sue
for rent in
respect of his
share in a tenure
or holding
against the
tenure or holding
on making
remaining
co-sharers
parties.

¹148A. (1) A co-sharer landlord may institute a suit to recover the rent due to him in respect of his share in a tenure or holding, by making all the remaining co-sharer landlords parties defendant to the suit and claiming that relief be granted to him in respect of his share of the rent against the entire tenure or holding.

(2) On the plaint being admitted, the Court shall by summons in the prescribed form call upon the remaining co-sharer landlords aforesaid to join in the suit as co-plaintiffs for their shares of the rent due to them in respect of the tenure or holding up to the date of the institution of the suit.

(3) On the date named in the summons for his appearance or on any subsequent date fixed by the Court in this behalf, any co-sharer landlord, who has been summoned as defendant, may apply to be joined in the suit as a co-plaintiff, and on his paying the court-fee on the amount of his claim, he shall be joined as a co-plaintiff in respect of the rent claimed to be due to him up to the date of the institution of the suit.

(4) If it comes to the notice of the Court that any co-sharer landlord has before the service upon him of a summons under sub-section (2) instituted a separate suit to recover his share of the rent of the tenure or holding, the separate suit shall be consolidated with that brought under sub-section (1) and such co-sharer landlord shall be deemed to be a co-plaintiff and shall amend his plaint so as to claim the rent due to him up to the date of the institution of the suit under sub-section (1):

Provided that, if the Court is not competent to consolidate and try the suit, such suit shall be transferred to a Court of competent jurisdiction for consolidation and trial.

(5) The summons on all the defendants to the suit other than co-sharer landlords shall thereafter be served, and the Court shall thereupon proceed to the trial of the suit.

(6) A decree passed by the Court for the rent claimed in a suit brought in accordance with the foregoing provisions of this section shall, so far as may be, specify separately the amounts payable to each co-sharer and shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.

¹Section 148A was substituted for the former section 148A as inserted by s. 44 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and section 148A as inserted by s. 44 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E.B. & A. Act I of 1908), by s. 94 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter XIII.—Judicial procedure.—Sec. 148A.)

(7) When one or more co-sharer landlords, having obtained a decree in a suit framed under this section, applies or apply for the execution of the decree by the sale of the tenure or holding, the Court shall, before proceeding to sell the tenure or holding, give notice of the application of the execution to the other co-sharers.

(8) (i) In disposing of the proceeds of the sale in execution of the decree referred to in sub-section (6) the following rules, instead of those contained in section 73 of the Code of Civil Procedure, 1908, shall be observed,—

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(a) there shall first be paid to the decree-holders the costs incurred by them in bringing the tenure or holding to sale;

(b) there shall in the next place be paid to the decree-holders the amount due to them under the decree in execution of which the sale was made;

(c) if there remains a balance after these sums have been paid, there shall be paid therefrom to the decree-holders and to any defendant landlords, who have not joined as plaintiffs, but have made application in this behalf within one month from the date of the confirmation of the sale, any rent which may have fallen due to them in respect of the tenure or holding between the institution of the suit and the date of the confirmation of the sale, in proportion to their respective shares in the tenure or holding:

Provided that the Court shall issue a notice to the judgment-debtor or his pleader, if any, before ordering any such payment;

(d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor on his application unless the Court for reasons to be recorded in writing otherwise directs.

(ii) If the judgment-debtor disputes the right of the decree-holder or of the co-sharer landlord who has been made a party defendant to receive any sum on account of rent under clause (c), the Court shall determine the dispute and the determination shall have the force of a decree.

(9) When a suit has been instituted under the provisions of sub-section (1), no co-sharer landlord, who has been made a party defendant thereto and duly served with summons issued under sub-section (2), shall be entitled to recover, save as co-plaintiff in that suit, any

(Chapter XIII.—Judicial procedure.—Secs. 149, 150.)

rent in respect of the tenure or holding for the period in suit or for any period previous thereto.

(10) Where a suit instituted under the provisions of sub-section (1) has been withdrawn with leave to bring a fresh suit, the procedure, remedies and disabilities hereinbefore provided by this section shall apply to such fresh suit when instituted and to the parties thereto.

(11) In the event of the holding or tenure not being sold as a result of a suit instituted under sub-section (1), nothing contained in rule 2 of Order II in Schedule I to the Code of Civil Procedure, 1908, shall preclude a co-sharer landlord who has been joined as plaintiff under sub-section (3) or is deemed to be a co-plaintiff under sub-section (4) from recovering by suit, rent and interest due to him and damages, if awarded, in respect of the tenure or holding for the period subsequent to the date of the institution of the suit under this section.

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(12) If the rent claimed in a plaint as amended under sub-section (4) is less than the rent claimed in the original plaint in the separate suit referred to in that sub-section, the balance of rent may be recovered under the provisions of clause (c) of sub-section (8) or of sub-section (17).

Payment into
Court of
money admitted
to be due to
third person.

149. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff, but to a third person, the Court shall * * * refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

Payment into
Court of
money admitted
to be due to
landlord.

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall * * * * *

¹The words "except for special reasons to be recorded in writing," which were repealed, in Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, in Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act. I of 1908), are omitted.

of 1885.]

(Chapter XIII.—Judicial procedure.—Secs. 151-153.)

refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

151. When a defendant is liable to pay money into Court under '[section 149 or 150] if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

Provisions as to payment of portion of money.

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be.

Court to grant receipt.

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

Appeals in rent suits.

(a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(b) the decree or order is passed by any other judicial officer specially empowered by the '[High Court] to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested or has acted in the exercise of his jurisdiction illegally or with material irregularity, and may pass such order as the District Judge thinks fit.

¹These words and figures were substituted for the words "either of the two last foregoing sections" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words were substituted for the words "Provincial Government" by s. 32 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

(Chapter XIII.—Judicial procedure.—Secs. 153A, 154.)

¹*Explanation.*—A question as to the regularity of the proceedings in publishing or conducting a sale in execution of a decree for arrears of rent is not a question relating to title to land or to some interest in land as between parties having conflicting claims thereto.

Deposit on application to set aside *ex parte* decree.

²**153A.** Every application for an order under ³[rule 13 of Order IX in Schedule I to the Code of Civil Procedure, 1908] to set aside a decree passed *ex parte*, or for a review of judgment, under ⁴[section 114 and rule 1 of Order XLVII in Schedule I to the said Code] in a suit between a landlord and tenant as such, shall contain a statement of the injury sustained by the applicant by reason of the decree or judgment:

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and no such application shall be admitted—

- (a) unless the applicant has, at or before the time when the application is admitted, deposited in the Court to which the application is presented the amount, if any, which he admits to be due from him to the decree-holder, or such amount as the Court may, for reasons to be recorded by it in writing, direct; or
- (b) unless the Court, after considering the statement of injury, is satisfied, for reasons to be recorded by it in writing, that no such deposit is necessary.

Date from which decree for enhancement takes effect.

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

¹This *Explanation* was added to section 153, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²Section 153A was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

³These words and figures were substituted for the words and figure "section 108 of the Code of Civil Procedure" by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴These words and figures were substituted for the words and figures, "section 623 of the said Code", *ibid*.

of 1928.]

(Chapter XIII.—Judicial procedure.—Secs. 155, 156.)

155. (1) A suit for the ejectment of a tenant, on the ground— Relief against forfeitures.

(a) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be) fixed by the court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

156. The following rules shall apply in the case of every *raiyat* ¹[or under-*raiyat*] ejected from a holding—

(a) when the *raiyat* ¹[or under-*raiyat*] has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive

Rights of ejected *raiyats* or under-*raiyats* in respect of crops and land prepared for sowing.

¹These words were inserted by s. 95 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act. IV of 1928).

(Chapter XIII.—Judicial procedure.—Secs. 157, 158.)

from the landlord the value of the crops as estimated by the Court executing the decree for ejectment;

- (b) when the *raiyat* ¹[or under-*raiyat*] has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value;
- (c) but a *raiyat* ¹[or under-*raiyat*] shall not be entitled to retain possession of any land, or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to the local usage; and
- (d) if the landlord elects under this section to allow a *raiyat* ¹[or under-*raiyat*] to retain possession of the land, the *raiyat* ¹[or under-*raiyat*] shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

Power for Court to fix fair rent as alternative to ejectment.

157. When a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

Application to determine incidents of tenancy.

158. (1) ²[Subject to the provisions of section 111], the Court having jurisdiction to determine a suit for the possession of land may, on the application of either the

¹See foot-note 1 on p. 687, *ante*.

²These words and figure were inserted, for Western Bengal by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

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(Chapter XIII.—Judicial Procedure.—Sec. 158.)

landlord or the tenant of the land, determine all or any of the following matters, namely:—

- (a) the situation, quantity and boundaries of the land;
- (b) the name and description of the tenant thereof (if any);
- (c) the class ¹[or classes] to which he belongs, that is to say, whether he is a tenure-holder, *raiyat* holding at fixed rates, occupancy-*raiyat*, non-occupancy-*raiyat*, or under-*raiyat* ²[with or without a right of occupancy] and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure; and
- (d) the rent payable by him at the time of the application.

(2) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under ³[Order XXVI in Schedule I to, and section 78 of, the Code of Civil Procedure, 1908,] by such Revenue-officer as the ⁴[Provincial Government] may authorize in that behalf by rule made under ⁵[rule 9 of Order XXVI in Schedule I to the said Code.]

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(3) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

[CHAPTER XIII A.]

158A to 158AAA. *Rep. by s. 33 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).*

¹These words were inserted by s. 96 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words were inserted by s. 96, *ibid*.

³These words and figures were substituted for the words "Chapter XXV of the Code of Civil Procedure" by s. 128.

⁴See foot-note 3 on p. 589, *ante*.

⁵These words and figures were substituted for the words and figure "section 392 of the said Code" by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter XIV.—Sale for arrears under decree.—Secs. 158B—160.)

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

158B. [*Passing of tenure or holding sold in execution of decree or certificate.*] Rep. by s. 99 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

General powers
of purchaser
as to avoidance
of incumbrances

159. ¹[(1)] Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as “protected interests,” but with power to annul the interests defined in this chapter as “incumbrances”:

Provided as follows:—

- (a) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf;
- (b) the power to annul shall be exercisable only in manner by this chapter directed.

²(2) Notwithstanding anything contained in the Code of Civil Procedure, 1908, whenever a tenure or holding is sold in execution of a decree for arrears of rent and the sale is confirmed, the purchase shall take effect from the date of confirmation of the sale.

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1908.

Protected
interests.

160. The following shall be deemed to be protected interests within the meaning of this chapter:—

- (a) any under-tenure existing from the time of the Permanent Settlement;
- (b) any under-tenure recognized by the settlement proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;
- (c) any lease of land whereon dwelling houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made;

¹Section 159 was re-numbered as sub-section (1) of s. 159 by s. 100 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Sub-section (2) was inserted by s. 100, *ibid*.

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- (d) any right of occupancy;
- (e) the right of a non-occupancy-*raiyat* to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer;
- (f) any right conferred on an occupancy-*raiyat* to hold at a rent which was a fair and reasonable rent at the time the right was conferred; ^{1*}
- ²(ff) the right of a *raiyat* at fixed rates to hold at ³[a fixed rent or rate of rent which has not been changed during twenty years]; and
- (g) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

161. For the purposes of this chapter—

- (a) the term “incumbrance,” used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in ⁴[section 160];
- (b) the term “registered and notified incumbrance,” used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument, of which a copy has, not less than three

Meaning of
“incumbrance”
and “registered
and notified
incumbrance.”

¹The word “and” was omitted by s. 11(1) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

²Clause (ff) was inserted by s. 101 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³These words were substituted for the words “the fixed rent or rate of rent” by s. 11(2) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

⁴This word and figure were substituted for the words “the last foregoing section” by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter XIV.—Sale for arrears under decree.—
Secs. 162, 163.)

months before the accrual of the arrear, been served on the landlord in manner hereinafter provided;

- ¹(c) the terms “arrears” and “arrear of rent” shall be deemed to include interest decreed under section 67 or damages awarded in lieu of interest under sub-section (1) of section 68.

Application for
sale of tenure or
holding.

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under “[rule 11 (2) of Order XXI in Schedule I to the Code of Civil Procedure, 1908] for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the *pargana*, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

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Combined
order of
attachment and
proclamation of
sale to be issued.

163. ³(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, when the decree-holder makes the application mentioned in section 162, the Court, if it admits the application under rule 17 of Order XXI in Schedule I to the said Code and orders execution of the decree as applied for, shall issue a combined order of attachment and proclamation in the prescribed form.

(2) The proclamation shall, in addition to stating and specifying the particulars mentioned in “[rule 66 of Order XXI in Schedule I to the said Code] announce—

- (a) in the case of a tenure or a holding of a *raiayat* holding at fixed rates, that the tenure or

¹Clause (c) was added, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) and for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²These words and figures were substituted for the words and figure “section 235 of the Code of Civil Procedure” by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³Sub-section (1) was substituted for former sub-section (1) by s. 102 (a), *ibid*.

⁴These words and figures were substituted for the words and figure “section 287 of the said Code” by s. 102 (b), *ibid*.

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Sec. 164.)

holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given with power to annul all incumbrances; and

- (b) in the case of an occupancy-holding ¹[not held at fixed rates], that the holding will be sold with power to annul all incumbrances.

²(3) Notwithstanding anything contained in sub-rules (1) and (2) of rule 67 of Order XXI in Schedule I to the said Code, the proclamation shall be published in the following manner—

- (a) by beat of drum at some place on or adjacent to the land comprised in the tenure or holding ordered to be sold and by fixing up a copy thereof in a conspicuous place on such land,
(b) by affixing a copy thereof in a conspicuous place at the Court-house of the issuing Court,
(c) by sending in the prescribed form by registered post to the judgment-debtor a concise statement of the order of attachment and proclamation at the time of the issue of the proclamation, and
(d) in such other manner as may be prescribed.

(4) Notwithstanding anything contained in ³[rule 68 of Order XXI in Schedule I to the said Code] the sale shall not, without the consent in writing of the judgment-debtor, take place, until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

164. (1) When tenure or holding at fixed rates has been advertised for sale under ⁴[section 163], it shall be

Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.

¹These words were inserted by s. 102 (b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Sub-section (3) was substituted for the former sub-section (3) by s. 102 (c), *ibid.*

³These words and figures were substituted for the words and figure "section 290 of the said Code" by s. 102 (d), *ibid.*

⁴This word and figure were substituted for the words "the last foregoing section" by s. 126, *ibid.*

*(Chapter XIV.—Sale for arrears under decree.—
Secs. 165—167.)*

put up to auction subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.

165. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under ¹[section 164] does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation ²[in accordance with the procedure provided in subsection (3) of section 163] announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

Sale of occupancy-holding with power to avoid all incumbrances, and effect thereof.

166. (1) When an occupancy-holding ³[not held at fixed rates] has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by ⁴[section 167], and not otherwise, annul any incumbrance on the holding.

Procedure for annulling incumbrances, under sections 164, 165 or 166.

167. (1) A purchaser having power to annul an incumbrance under ⁵[sections 164, 165 or 166]

¹This word and figure were substituted for the words "the last foregoing section" by s. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words and figures were substituted for the words and figure "under section 289 of the Code of Civil Procedure" by s. 128, *ibid.*

³These words were inserted by s. 103, *ibid.*

⁴This word and figure were substituted for the words "the next following section" by s. 103, *ibid.*

⁵These words and figures were substituted for the words "any of the foregoing sections" by s. 126, *ibid.*

[of 1885.]

(Chapter XIV.—Sale for arrears under decree.—
Sec. 168.)

Ben. Act
III of
1913

¹[or under the Bengal Public Demands Recovery Act, 1913], and desiring to annul the same, may, within one year from the date of the ²[confirmation of the] sale or the date on which he first has notice of the incumbrance, whichever is later, present to the ³[Court which passed the decree or the Revenue-officer who made the order, as the case may be, for sale of the property] an application in writing requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made ⁴[in manner provided by this section, the Court or Revenue-officer, as the case may be,] shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(4) When a tenure or holding is sold in execution of a decree ⁵[or a certificate signed under the Bengal Public Demands Recovery Act, 1913,] for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (c), the purchaser may, if he has power under this chapter ⁶[or that Act] to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

168. (1) The ⁷[Provincial Government] may, from time to time, by notification in the *Official Gazette*, direct

Power to direct that occupancy-holdings be dealt with under sections 159 to 167 as tenures.

¹These words and figure were inserted by s. 62 of the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913).

²These words were inserted by s. 104(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³These words were substituted for the word "Collector" by s. 104(a), *ibid.*

⁴These words were substituted for the words "to the Collector in the manner prescribed by this section, he" by s. 104(b), *ibid.*

⁵These words and figure were inserted by s. 62 of the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913).

⁶These words were inserted by s. 62, *ibid.*

⁷See foot-note 3 on p. 589, *ante*.

After section 168 insert the following section:—

“168A. (1) Notwithstanding anything contained elsewhere in this Act, or in Attachment and sale of tenure or holding for arrears of rent due thereon, and liability of purchasers thereof. any other law, or in any contract—

- (a) a decree for arrears of rent due in respect of a tenure or holding, whether having the effect of a rent decree or money decree, or a certificate for such arrears signed under the Bengal Public Demands Recovery Act, 1913, shall not be executed by the attachment and sale of any movable or immovable property other than the entire tenure or holding to which the decree or certificate relates:

Ben. Act III
of 1913.

Provided that the provisions of this clause shall not apply if, in any manner other than by surrender of the tenure or holding, the term of the tenancy expires before an application is made for the execution of such a decree or certificate;

- (b) the purchaser at a sale referred to in clause (a) shall be liable to pay to the decree-holder or certificate-holder the deficiency, if any, between the purchase price and the amount due under the decree or certificate—together with the costs incurred in bringing the tenure or holding to sale and any rent which may have become payable to the decree-holder between the date of the institution of the suit and the date of the confirmation of the sale.

(2) In any proceeding pending on the date of the commencement of the Bengal Tenancy (Amendment) Act, 1940, in execution of a decree or certificate to which the provisions of sub-section (1) apply, if there has been attached any immovable property of the judgment-debtor other than the entire tenure or holding to which the decree or certificate relates, and if the property so attached has not been sold, the Court or Certificate-officer as the case may be shall, on the application of the judgment-debtor, direct that, on payment by the judgment-debtor of the costs of the attachment, the property so attached shall be released.

(3) A sale referred to in clause (a) of sub-section (1) shall not be confirmed until the purchaser has deposited with the Court or Certificate-officer, as the case may be, the sum referred to in clause (b) of that sub-section.”

(Inserted by Ben. Act XVIII of 1940, section 5.)

[No. 10, dated the 16th January 1941.]

*These words were inserted by s. 105(b), *ibid*.

*These words were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—
Sec. 170.)

(d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application ¹[unless the Court for reasons to be recorded in writing otherwise directs]:

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

Act V of
1901.

³170. (1) ⁴[Rules 58 to 63 (both inclusive) of Order XXI in Schedule I to the Code of Civil Procedure, 1908] shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

Tenure or holding to be released from attachment only on payment into Court of amount of decree, with costs, or on confession of satisfaction by decree-holder.

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor, or any person ⁵[whose interests are affected by the sale;] may pay money into Court under this section.

(4) The withdrawal of the amount deposited under ⁶[this section or section 174] by the decree-holder landlord shall not operate as an admission of the transferability of the tenure or holding sold in execution of the decree.

¹These words were added by s. 105(c) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The proviso was omitted by s. 105(d), *ibid*.

³Section 170 as modified by s. 54 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908) was substituted for s. 170 as modified by s. 54 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by s. 106(1), *ibid*.

⁴These words and figures were substituted for the words and figures "sections 278 to 283 (both inclusive) of the Code of Civil Procedure" by s. 128, *ibid*.

⁵These words were substituted for the words "having in the tenure or holding any interest voidable on the sale" by s. 106(2), *ibid*.

⁶These words and figure were substituted for the words and figure "section 310A of the Code of Civil Procedure" by s. 106(3), *ibid*.

[Act VIII]

(Chapter XIV.—Sale for arrears under decree.—
Secs. 171, 172.)

Amount paid
into Court
to prevent sale
to be in certain
cases a
mortgage-debt
on the tenure
or holding.

171. (1) ¹[When any person whose interests are affected by the sale of a tenure or holding advertised for sale under this chapter or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bengal Public Demands Recovery Act, 1913] pays into Court the amount requisite to prevent the sale—

Ben. Act
III of
1913.

- (a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve *per centum per annum* and secured by a mortgage of the tenure or holding to him;
- (b) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and
- (c) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

Inferior tenant
paying into
Court may
deduct from
rent.

²172. When a tenure or holding is advertised for sale—

- (a) under this chapter, in execution of a decree against a superior tenant defaulting, or
- (b) in execution of a certificate, signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of the tenure or holding from a superior tenant defaulting,

or when such sale is set aside under section 174—

and an inferior tenant pays money into Court in order to prevent or set aside the sale, as the case may be, such inferior tenant may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

¹These words and figure were substituted by s. 107 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Section 172 was substituted for the former section 172 by s. 108, *ibid.*

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—
Secs. 173, 174.)

Act V of
1908.

173. (1) Notwithstanding anything contained in [rule 72 of Order XXI in Schedule I to the Code of Civil Procedure, 1908,] the holder of a decree in execution of which a tenure or holding is sold under this chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

Decree-holder
may bid at sale;
judgment-debtor
may not.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it shall be paid by the judgment-debtor.

174. (1) Rules 89 and 90 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply in cases where a tenure or holding has been sold for arrears of rent due thereon, but in such cases the judgment-debtor, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Court to set aside the sale, on his depositing—

Application to
set aside sale.

- (a) for payment to the decree-holder, the amount recoverable under the decree up to the date when the deposit is made, with costs;
- (b) for payment to the auction-purchaser, as penalty a sum equal to five *per cent.* of the purchase-money, but not less than one rupee.

(2) Where a person makes an application under sub-section (3) for setting aside the sale of his tenure or holding he shall not, unless he withdraws that application, be entitled to make or prosecute an application made under sub-section (1).

(3) Where a tenure or holding has been sold for arrears of rent due thereon, the decree-holder, the judgment-debtor, or any person whose interests are affected by the sale, may, at any time within six months from the date of the sale, apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting the sale:

¹These words and figures were substituted for the words and figure "section 294 of the Code of Civil Procedure" by s. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Section 174 was substituted for the former section 174 by s. 109 *ibid.*

(Chapter XIV.—Sale for arrears under decree.—
Sec. 174A.)

Provided as follows:—

- (a) no sale shall be set aside on any such ground unless the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud; and
- (b) no application made by a judgment-debtor or any person whose interests are affected by the sale under this sub-section shall be allowed unless the applicant either deposits the amount recoverable from him in execution of the decree or satisfies the Court, for reasons to be recorded by it in writing, that no such deposit is necessary.

(4) Rule 91 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply to any sale under this chapter. Act V of 1908.

(5) An appeal shall lie against an order setting aside or refusing to set aside a sale:

Provided that where the Court has refused to set aside the sale on the application of the judgment-debtor or any person whose interests are affected by the sale and the amount recoverable in execution of the decree is not in deposit in Court, no such appeal shall be admitted unless the appellant deposits such amount in Court.

Sale when to become absolute or be set aside, and return of purchase money in certain cases.

¹174A. (1) Where no application is made under ²[sub-section (1) of section 174 within thirty days from the date of sale] or where such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute.

(2) Where such application is made and allowed, and where in the case of an application under sub-section (1) of section 174, the deposit required by that sub-section is made within thirty days from the date of sale, the Court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) Where a sale is set aside under this section, the purchaser shall be entitled to an order against any person to whom the purchase money has been paid for its repayment with or without interest as the Court may direct.

¹Section 174A was inserted by s. 110 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words and figures were substituted for the word and figure "section 174" by s. 12(a) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—Chapter XV.—Contract and custom.—Secs. 175—178.)

(4) No suit to set aside an order made under this section shall be brought by any person against whom such order is made.

¹(5) Notwithstanding anything contained in this section, an application may be made under sub-section (3) of section 174 to set aside the sale, and where such application is allowed the order made under sub-section (1) confirming the sale shall be deemed to be cancelled.

175. [*Registration of certain instruments creating incumbrances.*] Rep. by section 13 of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act. II of 1930).

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the ²[Provincial Government] may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

Notification of incumbrances to landlord.

177. Nothing contained in this chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

Power to create incumbrances not extended.

CHAPTER XV.

CONTRACT AND CUSTOM.

178. (1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act—

Restrictions on exclusion of Act by agreement.

- (a) shall bar in perpetuity the acquisition of an occupancy-right in land, or
- (b) shall take away an occupancy-right in existence at the date of the contract, or
- (c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or
- (d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them, ³[or

¹Sub-section (5) was inserted by s. 12(b) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

²See foot-note 3 on p. 589, *ante*.

³The portion within square brackets was inserted by s. 112(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter XV—Contract and custom.—Sec. 178.)

- (e) shall entitle a landlord to recover as rent, from a tenant whose rent is a share, as opposed to a fixed quantity of produce, produce in excess of half the gross produce of the holding for the year for which the rent is claimed, or
 - (f) shall take away or limit the rights of an under-*raiyat* as against his immediate landlord, as set forth in Chapter VII, or
 - (g) shall take away or limit the right of an occupancy-*raiyat* to transfer his holding or any share or portion thereof in accordance with the provisions of sections 26B to 26G, or
 - (h) shall take away or limit the rights of occupancy-*rai-yats* in trees on their holdings, as provided in section 23A, or
 - (i) shall affect the provisions of section 67 relating to interest payable on arrears of rent.]
- (2) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act, shall prevent a *raiyat* from acquiring in accordance with this Act, an occupancy-right in land.
- (3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—
- (a) prevent a *raiyat* from acquiring, in accordance with this Act, an occupancy-right in land;
 - (b) take away or limit the right of an occupancy-*raiyat* to use land as provided by section 23;
 - (c) take away the right of a *raiyat* ²[or under-*raiyat*] to surrender his holding in accordance with section 86;
- * * * * *
- ³(d) take away the right of an occupancy-*raiyat* to sub-let subject to, and in accordance with, the provisions of this Act;
 - ⁴(e) take away the right of a *raiyat* to apply for a reduction of rent under section 38 or section 52;
- * * * * *

¹The figure and letter "26G" were substituted for the figure and letter "26J" by s. 34 (i) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²These words were inserted by s. 34 (2), *ibid.*

³Former clauses (d), (g) and (h) were omitted by s. 112(b)(i), of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴Clauses (e) and (f) were renumbered as clauses (d) and (e), respectively, by s. 112(b)(ii), *ibid.*

of 1885.]

(Chapter XV—Contract and custom.—Sec. 179.)

Provided as follows:—

- (i) nothing in this section shall affect the terms or conditions of a lease granted *bona fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V, be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;
- (ii) when a landlord has reclaimed waste-land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a *raiyat*, nothing in this Act shall affect the terms of any contract whereby a *raiyat* is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a *raiyat*;
- (iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of ¹[horticultural or] orchard land with agricultural crops.

²*Explanation.*—The expression “horticultural land,” as used in proviso (iii), means garden land, in the occupation of a proprietor or permanent tenure-holder, which is used *bona fide* for the cultivation of flowers or vegetables, or both, grown for the personal use of such proprietor or permanent tenure-holder and his family, and not for profit or sale.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent *mukarrari* lease on any terms agreed on between him and his tenant:

Permanent
mukarrari
leases.

³Provided that such proprietor or holder shall not be entitled to recover interest at a rate exceeding that set forth in section 67 or anything that is an *abwab* or the recovery of which is illegal under the provisions of section 74 or sub-section (3) of section 77.

¹These words were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²This *Explanation* was added, for Western Bengal by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

³This proviso was inserted by s. 113 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter XV—Contract and custom.—Secs. 180, 180A.)

*Utbandi, char
and diara lands.*

180. (1) Notwithstanding anything in this Act, a *raiyat*—

(a) who, in any part of the country where the custom of *utbandi* prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(b) who holds land of the kind known as *char* or *diara*,

shall not acquire a right of occupancy—
in case (a), in land ordinarily held under the custom of *utbandi* and for the time being held under that custom, or

in case (b), in the *char* or *diara* land,

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to *raiyats* holding land under the custom of *utbandi* in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, ¹[or, after hearing both landlord and tenant, of his own motion] declare that any land has ceased to be *char* or *diara* land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

*Fixing of
uniform annual
money rent
in respect of
utbandi lands.*

²180A. (1) Notwithstanding anything contained in section 180, when a *raiyat* who is or who but for the operation of section 180 in respect of land held under the custom of *utbandi* would have been, a settled *raiyat* of the village, holds or has held under the custom of *utbandi*, or under any form of tenancy locally known as *utbandi* land (hereinafter referred to as *utbandi* land), either the landlord or the *raiyat* may apply to have a uniform annual money rent determined for the land.

(2) The application shall include at the discretion of the applicant either—

(a) all *utbandi* lands held in the same village by the same *raiyat* under the same landlord in which the *raiyat* has acquired a right of occupancy whether under the provisions of section 180 or otherwise, or

¹These words were inserted by s. 35 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²Sections 180A to 180C were inserted by s. 2 of the Bengal Tenancy (*Utbandi* Amendment) Act, 1923 (Ben. Act X of 1923).

of 1885.]

(Chapter XV—Contract and custom.—Sec. 180A.)

(b) all the lands held in the same village under the same landlord by the *raiyat* which the *raiyat* or any deceased person whose heir he is, has cultivated as *utbandi* land at any time during the preceding period of six years if he or the said deceased person is the last person to have cultivated the land and has not or had not acquired occupancy-rights therein, or

(c) both.

(3) Subject to the provisions of sub-section (2), a single application may be made by a landlord in respect of lands held as *utbandi* lands in the same village by one or more *raiyats* under him and a joint application may be made by two or more *raiyats* in respect of lands held by them as *utbandi* lands in the same village under the same landlord.

(4) The application may be made to the Collector or to a Subdivisional Officer or to a Revenue-officer appointed by the ¹[Provincial Government] under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights under Chapter X or to any other officer specially authorized by the ¹[Provincial Government].

(5) The case may be determined by the officer who receives the application, or the Collector or the Settlement Officer may transfer it for disposal to some other officer competent under sub-section (4) to receive applications.

(6) The officer receiving the application or the officer to whom the case is transferred, as the case may be, shall cause notice to be given in the prescribed manner to the opposite party, and shall fix a date for the determination of the case.

If the immediate landlord or the *raiyat* is a temporary tenure-holder or *ijaradar*, the officer receiving the application shall also give notice to the superior landlord in the lowest degree, who is a proprietor or permanent tenure-holder.

(7) If the application is made in respect of lands in which the *raiyat* has not acquired occupancy-rights, the officer may reject it in respect of such lands, if he is satisfied in view of all the circumstances of the case that it is unreasonable to grant it:

¹See foot-note 3 on p. 589, *ante*.

(Chapter XV.—Contract and custom.—Sec. 180A.)

Provided that a refusal shall be no bar to proceedings being again taken under this section after five years from the date of refusal if in the opinion of the officer who then receives the application the circumstances have in the meantime changed.

(8) If the application is not rejected, the officer shall then determine the sum to be paid as a uniform annual money rent, and also in the case of lands in which the *raiyat* has not acquired occupancy-rights, a premium to be paid to the landlord, and he shall order that the *raiyat* shall, in lieu of paying the rent for the land as *utbandi* land, pay the sum so determined and the premium, if any:

Provided that in any case in which an order fixing a uniform annual money rent is passed *ex parte* the opposite party may within one month of the date of such order or, when the notice has not been duly served, within one month of the date of his knowledge of such order apply to the officer by whom the order was passed for an order to set it aside and, if he satisfies the officer that the notice of the application under sub-section (1) was not duly served on him or that he was prevented by any sufficient cause from appearing when the case was determined, the officer shall set aside the order and shall appoint a day for the determination of the case. No order shall be set aside on application made under this proviso unless notice thereof has been served on the respondent thereto.

(9) In making the determination of the sum to be paid as rent, the officer shall calculate the average of the amount that was actually paid or payable as rent for the land for the previous six years and shall ordinarily declare the same as the sum to be paid as rent:

Provided that the officer may also take into consideration—

- (a) the average money rent payable by occupancy-*raiyats* for land of a similar description and with similar advantages in the vicinity;
- (b) the average rate for lands of a similar description and with similar advantages in the vicinity held as *utbandi* lands;
- (c) the average money rent payable for lands of a similar description and with similar advantages in the vicinity by *raiyats* who formerly paid their rent for those lands as *utbandi* lands but whose rents have been converted into uniform annual money rents whether under this section or by agreement or otherwise;

of 1885.]

(Chapter XV—Contract and custom.—Sec. 180A.)

- (d) the charges incurred in accordance with custom by the landlord in respect of the irrigation and drainage of the *utbandi* lands and the arrangements made for continuing those charges;
- (e) the rules laid down in this Act for the guidance of the Civil Courts in enhancing or reducing rents on account of the holdings of occupancy-*raiyats*;
- (f) any sum agreed to by the parties to be paid as money rent:

Provided that the officer shall in no case determine a rent which is unfair or inequitable.

(10) The premium to be paid to the landlord in the case of lands in which the *raiyat* has not acquired occupancy-rights shall be three times the rent, or, if the application is made under clause (c) of sub-section (2), three times the portion of the rent determined under sub-section (8) on account of such lands.

(11) If the immediate landlord of the *raiyat* is a temporary tenure-holder or *ijaradar* the officer shall apportion the premium payable under sub-section (10) between the said temporary tenure-holder or *ijaradar* and his superior landlord of the lowest degree who is a proprietor or permanent tenure-holder in such manner as may appear fair and reasonable to the officer in view of all the circumstances of the case, and any sum so awarded to the said superior landlord shall be recoverable by him from the temporary tenure-holder or *ijaradar* or his successor in interest as an arrear of rent but shall not be recoverable by the superior landlord from the *raiyat*.

(12) The order shall be in writing, shall state the grounds on which it is made, and shall, in the absence of any special reasons to the contrary recorded in writing, take effect from the beginning of the agricultural year next after the date on which it is made.

(13) The officer shall fix the date (not being more than one month from the date of the order) by which the premium shall be paid or he may, on the application of the *raiyat*, order that the premium shall be paid by instalments not exceeding three in number, that the first instalment shall be paid at the beginning of the agricultural year in which the rent settled under sub-section

(Chapter XV.—Contract and custom.—Sec. 180B.)

(8) takes effect and that one of the remaining instalments shall be paid at the beginning of each of the succeeding agricultural years until the premium is paid in full.

¹(14) The premium or any instalment thereof shall be recoverable as rent, and interest shall not be payable on any instalment in respect of which default has not been made.

(15) Any order made under this section shall be subject to appeal in the manner provided in section ²[115C] unless the application has been made in the course of proceedings under Part II of Chapter X, in which case the provisions of sections 104G and 104H shall apply.

(16) An application made under sub-section (1) may be amended if it appears at any time to the officer prior to the issue of the order under sub-section (7) or sub-section (8) or to the appellate or revisional Court that it does not comply with the provisions of sub-section (2) but that it can be brought into conformity with that sub-section. Such amendment may be made either on the initiative of the parties or either of them or of the officer or Court but it shall not be made unless prior notice thereof is given to the parties, and, if such amendment is made, it shall be made only on such terms or conditions as to such officer or Court shall appear to be just.

(17) Notwithstanding anything contained elsewhere in this Act or in any other law, no suit shall be brought or application made in any Court in respect of any order passed under this section, save as is provided in this section.

Lands in respect of which a uniform annual money rent has been fixed under section 180A to cease to be *utbandi* lands.

³180B. Whenever an order under section 180A is passed determining a uniform annual money rent for any lands, such lands shall cease to be held as *utbandi* lands with effect from the date from which the new rent takes effect, and the tenant shall hold them as an occupancy-*raiyat* from the date of the order.

¹Sub-section (14) was substituted for the former sub-section (14) by s. 36 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²This figure and letter were substituted for the figure and letter "109A" by s. 71, of the Bengal Tenancy (Amendment) Act, 1928, (Ben. Act IV of 1928).

³See foot-note 2 on p. 704, *ante*.

(Chapter XV.—Contract and custom.—Chapter XVI.—
Limitation.—Secs. 180C—184.)

180C. (1) Where a uniform annual money rent has been fixed under section 180A, the said rent shall not, except on the ground of a landlord's improvement or of a subsequent alteration of the area of the holding, be enhanced for fifteen years; nor shall it be reduced for fifteen years, save on the ground of alteration in the area of the holding, or on the ground specified in clause (a) of sub-section (1) of section 38.

Period for which rent fixed under section 180A to remain unaltered.

(2) The said period of fifteen years shall be counted from the date on which the order takes effect under sub-section (12) of section 180A.

181. Nothing in this Act shall affect any incident of a *ghatwali* or other service-tenure, or in particular, shall confer a right to transfer or bequeath which before the Act was in force was not so.

Saving as to service-tenures.

Page 709.—

In the penultimate line of section 182 for the word *esteads*, "*raiayat*" read "*raiayats*".

[No. 2, dated the 12th February 1940.]

of the homestead, and the incidents of his tenancy of such homestead shall be governed by the provisions of this Act applicable to *raiayat* or under-*raiayats*, as the case may be.

183. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Saving of custom.

CHAPTER XVI.

LIMITATION.

184. (1) The suits, appeals and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that schedule for them, respectively; and every such suit or appeal instituted, and application made, after the period of limitation so "[provided]" shall be dismissed although limitation has not been pleaded.

Limitation in suits, appeals and applications in Schedule III.

¹See foot-note 2 on p. 704, *ante*.

²Section 182 was substituted for the former section by s. 114 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The illustrations were omitted by s. 115, *ibid*.

⁴This word was substituted for the word "prescribed" by s. 127, *ibid*.

[Act VIII

(Chapter XVI—Limitation.—Chapter XVII—Supplemental.—
Secs. 185, 186.)

(2) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

Portions of
the Indian
Limitation Act
not applicable
to such suits,
etc., mentioned
in Schedule III.

¹185. Sections 6, 7, 8 and 9 and sub-section (2) of section 29 of the Indian Limitation Act, 1908, shall not and, subject to the provisions of this chapter, the remaining provisions of that Act, shall apply to all suits, appeals and applications specified in Schedule III annexed to this Act. IX of 1908.

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

Penalties for
illegal interfer-
ence with
produce.

186. (1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

- (a) distrains or attempts to distrain the produce of a tenant's holding, or,
- (c) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

Act XLV
of 1860.

(2) Any person who abets, within the meaning of the Indian Penal Code, the doing of any act mentioned in sub-section (1), shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

¹Section 185 was substituted for the former section 185 by s. 116 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV. of 1928).

²Clause (b) was omitted by s. 117, *ibid*.

of 1885.]

(Chapter XVII.—Supplemental.—Secs. 186A, 187.)

¹Damages for denial of landlord's title.

¹186A. (1) When, in any suit between a landlord and tenant as such, the tenant renounces his character as tenant of the landlord by setting up without reasonable or probable cause title in a third person or himself, the Court may pass a decree in favour of the landlord for such amount of damages, not exceeding ten times the amount of the annual rent payable by the tenant, as it may consider to be just.

Damages for denial of landlord's title.

(2) The amount of damages decreed under sub-section (1), together with any interest accruing due thereon, shall, subject to the landlord's charge for rent, be a first charge on the tenure or holding of the tenant; and the landlord may execute such decree for damages and interest, either as a decree for a sum of money, or, * * * in any of the modes in which a decree for rent may be executed.

Agents and representatives of landlords.

187. (1) Any appearance, application or act, in, before or to any Court or authority, required or authorised by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

Power for landlord to act through agent.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorising an agent, may be signed or certified by an agent of the landlord authorised in writing in that behalf.

¹This heading and section 186A were inserted for Western Bengal by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²The words and figure "subject to the provisions of section 158B" were omitted by s. 118 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter XVII.—Supplemental.—Sec. 188.)

Action to be taken collectively by co-sharer landlords or by their common agents except in certain cases.

188. (1) Subject to the provision of section 148A, where two or more persons are co-sharer landlords, anything which the landlord is under this Act required or authorised to do must be done either by both or all those persons acting together or by an agent authorised to act on behalf of both or all of them:

Provided that one or more co-sharer landlords, if all the other co-sharer landlords are made parties defendant to the suit or proceeding in manner provided in sub-sections (1) and (2) of section 148A and are given the opportunity of joining in the suit or proceeding as plaintiffs or co-applicants, may—

- (ii) bring a suit for enhancement of the rent of a tenure under section 7 or of a holding under section 30, or for alteration of rent on account of alteration in area under section 52,
- (iii) bring a suit for ejectment of a tenant on the grounds specified in section 10, clause (b) of section 18, section 25, or clause (a), clause (b), or clause (c) of section 44, or in accordance with the provisions of ³[section 48C] or section 66,
- (iv) make applications as regards improvements under sections 78, 80 and 81,
- (v) apply for measurement under sections 90 and 91.
- (vi) file an application under section 105,
- (vii) bring a suit under section 106,
- (viii) apply for record of private lands under section 118,
- (ix) apply for the determination of the incidents of a tenancy under section 158,
- (x) apply to the Collector for a declaration under sub-section (3) of section 180.

(2) Any decree passed or order made in a suit or proceeding in which the conditions set forth in sub-section (1) of this section have been complied with, shall have the effect of a decree passed or order made,

¹Section 188 was substituted for the former section 188 by s. 119 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Clause (i) of the proviso was omitted by s. 37 of the Bengal Tenancy (Amendment) Act, 1936 (Ben. Act VI of 1936).

³This word, figure and letter were substituted for the word and figure "section 49" by s. 14 of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

of 1885.]

(Chapter XVII.—Supplemental.—Secs. 188A, 189.)

on the application of the sole landlord or the whole body of landlords, and shall take effect as regards the whole tenure or holding, as the case may be:

Provided that where a suit is brought under section 7 or section 30 for enhancement of rent, or under section 52, for alteration of rent, or where an application is made under section 105 by a co-sharer landlord for settlement of rent, the Court or Revenue-officer, as the case may be, when the rent has been fixed or settled, shall distribute any amount by which the rent has been increased or reduced between the co-sharer landlords of the tenancy in proportion to their respective shares in such tenancy whether they have or whether they have not joined as plaintiffs or applicants, and such distribution shall be binding on all the co-sharer landlords as if they had all sued or applied for the same, and for the purposes of any appeal, application or suit in regard to such distribution they shall be deemed to have sued or applied under sub-section (1) of this section together with co-sharer plaintiff or applicant.

188A. [*Procedure in suits by joint landlords.*] Rep. by section 120 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

Rules under Act.

189. The ¹[Provincial Government] may, from time to time, by notification in the *Official Gazette*, make rules, consistent with this Act,—

Power to make rules regarding procedure, powers of officers and services of notices.

(1) to regulate the procedure to be followed by Revenue officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(a) any power exercised by a Civil Court in the trial of suits;

(b) power to enter upon any land, and to survey, demarcate and make a map of the same and any power exercisable by any officer under the Bengal Survey Act, 1875; and

(c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of soil; and

Ben. Act V
of 1875.

¹See foot-note 3 on p. 589, ante.

(Chapter XVII.—Supplemental.—Sec. 189.)

- ¹(2) to prescribe the forms to be used, and the mode of service of notices issued, under this Act, where no form or mode is ²[provided in] this or any other Act;
- ¹(3) to prescribe the manner in which ³[the landlord's fee * * * * *] shall be transmitted to the landlord; * * *
- ¹(4) to prescribe the authority by whom the fees, deposited under sections 12, 13, 15, 17, ⁴[and 18] may be declared to be forfeited, and the mode in which such fees, when so forfeited, shall be dealt with; ⁵[and]
- ⁶(5) to provide for all or any of the following matters namely—

Pages 714-715—

In section 189—

(1) Omit clause (3);

(2) in clause (5)—

(a) omit sub-clause (b); and

(b) after sub-clause (c) insert the following sub-clause, namely:—
“(cc) the manner of filing the notices referred to in sub-section (2) of section 12, in sub-section (1) of section 13, and in sub-sections (1), (2), (3) and (4) of section 26C”.

(Omitted and inserted by Bengal Act V of 1947, section 9.)

[No. 42, dated the 12th January, 1948.]

Section 104B;

(vii) the draft Settlement Rent-roll under sub-section (1) of section 104E;

(viii) proclamation under clause (d) of sub-section (3) of section 163; and

¹Sub-sections (2) to (4) were substituted for the original sub-section (2), for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²These words were substituted for the words “prescribed by” by s. 121 (1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³These words were substituted for the words “landlords’ fee” by s. 121 (2), *ibid.*

⁴The words “or the landlord’s transfer fee” were omitted by s. 38 (1) (a) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁵The word “and” was omitted by s. 38 (1) (b), *ibid.*

⁶This word and figure were substituted for the figures, words and letters “18, clause (a), 26C, 26E and 48H” by s. 38 (2) (a), *ibid.*

⁷This word was inserted by s. 38 (2) (b), *ibid.*

⁸Clause (5) was inserted by s. 121 (4) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928.)

of 1885.]

(Chapter XVII.—Supplemental.—Sec. 189.)

(ix) the rules made by authorities other than the ¹[Provincial Government] or the High Court under sub-section (2) of section 190;

(b) the manner of payment of the landlord's fee under sub-section (4) of section 12
* * * *;

²(c) the amount of fees—

(i) for processes referred to in sub-section (2) of section 12, in sub-sections (1), (2), (3) (4) and (5) of section 26C, in sub-section (6) of section 26G, in sub-section (2) of section 85A and in sub-section (2) of section 88;

(ii) for service of notice referred to in sub-section (1) of section 13; and

(iii) referred to in sub-section (2) of section 61 and in sub-section (6) of section 88;

(d) the amount of the cost of transmission of fees or other monies;

(e) the manner of payment or tender of rent by postal money-order;

(f) the manner of verification of applications under sub-section (2) of section 80;

(g) the information to be contained in the applications referred to in sub-section (2) of section 80;

(h) the form of the register referred to in clause (a) of sub-section (2) of section 99A and the particulars to be therein entered;

(i) the manner of making a survey and preparing a record-of-rights under sub-section (4) of section 101;

(j) the particulars referred to in the proviso to clause (j) of section 102;

¹See foot-note 3 on p. 589, *ante*.

²The words, figures and letter "and of the landlord's transfer fee and costs of transmission under sub-section (7) of section 26C" were omitted by s. 38(3) (a) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

³Sub-clause (c) was substituted for the former sub-clause (c) by s. 38(3) (b), *ibid*.

(Chapter XVII.—Supplemental.—Sec. 190.)

- (k) the period of publication of the draft record-of-rights under sub-section (1) of section 103A and of the draft Settlement Rent-roll under sub-section (1) of section 104E;
- (l) the manner in which objections shall be considered and disposed of under sub-section (2) of section 103A;
- (m) the empowering of the "confirming authority" referred to in sub-section (4) of section 104B;
- (n) the superior Revenue authority referred to in section 104G;
- (o) the stamp to be borne by applications under sub-section (1) or sub-section (2) of section 105;

¹(p) * * * * *

- (q) any other matter required or permitted under this Act to be prescribed.

Procedure for making, publication and confirmation of rules.

190. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the ²[Provincial Government] or High Court, in such manner as may, in its opinion, be sufficient for giving information to persons interested, and in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the *Official Gazette*.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the *Official Gazette* of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

¹Sub-clause (p) was omitted by s. 38(3) (c) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938.)

²See foot-note 3 on p. 589, *ante*.

[1928.]

(Chapter XVII.—Supplemental.—Secs. 191, 192.)

(6) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to or cancelled by the authority having power to make the same.

Provisions as to temporarily-settled districts.

191. Where the area comprised in a tenure or holding is situate in an estate not subject to a subsisting permanent settlement and when, Settlement of rent of land held in a district not permanently settled.

(a) land-revenue is for the first time made payable in respect of the land, or

(b) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

nothing in this Act or in any lease or contract made after the passing of the Bengal Tenancy Act, 1885, shall entitle any tenant to hold his tenancy free of rent or at a particular rent, unless in the case of a fresh settlement made under clause (b) the right so to hold beyond the term of the previous settlement has been expressly recognised at the previous settlement by a Revenue authority empowered by ²[the Provincial Government] to make definitively or confirm settlements, and the Revenue-officer may, notwithstanding anything in the contract between the parties by order, on the application of the landlord or of the tenant or of his own motion fix a fair and equitable rent for all grades of tenants in accordance with the principles laid down in sections 6, 7, 8, 9, 27 to 36, 38, 39, 43, 50 to 52 and 180 :

Provided that, notwithstanding anything contained in sub-section (3) of section 7 he may divide the minimum profit of ten *per centum* provided for in that sub-section among two or more grades of tenure-holders if such exists.

192. [*Power to alter rent in case of new assessment of revenue.*] Amalgamated with section 191 by section 122 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

¹Section 191 was substituted for former sections 191 and 192 by s. 122 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words were substituted for the word "Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter XVII.—Supplemental.—Secs. 193—195.)

Rights of pasturage, etc.

Rights of
pasturage,
forest-rights,
etc.

193. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-right, rights over fisheries and the like.

Saving for conditions binding on landlords.

Tenant not
enabled by Act
to violate
conditions
binding on
landlord.

194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition:

¹Provided that the section shall not apply to a *raiyat* or an under-*raiyat* doing any act in exercise of the rights conferred by this Act upon *raiyats* or under-*raiyats*, as the case may be.

Savings for special enactments.

Savings for
special
enactments.

195. Nothing in this Act shall affect—

- (a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;
- (b) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue authorities;
- (c) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;
- (d) any enactment relating to the partition of revenue-paying estates;
- ²(e) any enactment relating to *patni*-tenures in so far as it relates to those tenures, except that—
 - (i) the provisions of section 67 and of clause (i) of sub-section (1) of section 178 shall apply to all *patni*-tenures, and

¹This proviso was added by s. 123 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Clause (e) was substituted for the former clause (e) by s. 39 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

of 1885.]

(Chapter XVII.—Supplemental.—Secs. 195A, 196.)

Reg. VIII
of 1819.

(ii) the expression 'khudkast raiyat or resident and hereditary cultivator' in sub-section (3) of section 11 of the Bengal Patni Taluks Regulation, 1819, shall be deemed to include all *raiya*ts. having a right of occupancy; or

(f) any other special or local law not repealed either expressly or by necessary implication by this Act.

Protection for certain acts.

¹195A. No suit or other proceeding shall be instituted against the ²[Crown] or against any officer of the ³[Crown] in respect of anything done by the registering officer, the Collector or the Court in regard to the receiving, distribution or payment of the landlord's fee or the landlord's transfer fee:

Protection
in certain c
for acts done.

Provided that nothing in this section shall prevent any person entitled to receive the amount of any such landlord's fee or landlord's transfer fee or any portion thereof from recovering the same from a person to whom it has been paid by the Collector or the Court.

* * * * *

196. [Act to be read subject to Acts hereafter passed by Lieutenant-Governor of Bengal in Council.] Rep. by s. 125 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

¹Section 195A was inserted by s. 15 of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

²This word was substituted for the words "Secretary of State for India in Council" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

³This word was substituted for the word "Government", *ibid*.

⁴The heading "Construction of Act" was repealed by s. 125 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Schedule I.—Repeal of enactments.)

SCHEDULE I.

(See section 2.)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
VIII of 1793	A regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the public revenue payable from the lands of the <i>zamindars</i> , independent <i>talukdars</i> and other actual proprietors of land in Bengal, Bihar and Orissa, passed for those Provinces, respectively, on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections, 51, 52, 53, 54, 55, 64 and 65.
XII of 1805	A regulation for the settlement and collection of the public revenue in the <i>zila</i> of Cuttack, including the <i>parganas</i> of Pataspur, Kamardachor and Bhograi, at present included in the <i>zila</i> of Midnapore.	Section 7.
V of 1812 ..	A Regulation for amending some of the rules at present in force for the collection of the land revenue.	Sections 2, 3, 4, 26 and 27.
XVIII of 1812	A Regulation for explaining section 2, Regulation V, 1812, and rescinding sections 3 and 4, Regulation XLIV, 1793, and sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
XI of 1825	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "Nor if annexed to a subordinate tenure" to the end of the clause.

of 1885.]

(Schedule I.—Repeal of enactments.)

Acts of the Bengal Council.

Number and year.	Subject of Act.	Extent of repeal.
VI of 1862	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
IV of 1867 ..	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII of 1869	An Act to amend the Procedure in suits between landlords and tenants.	The whole Act.
VIII ² of 1879	An Act to define and limit the powers of Settlement-officers.	The whole Act.
	<i>Act of the Governor General in Council.</i>	
X of 1859 ..	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

(Schedule II.—Particulars of receipt and of statement of account.)

¹SCHEDULE II.PARTICULARS OF RECEIPT AND ²[OF STATEMENT OF ACCOUNT].

(See sections 56 and 57.)

Particulars of receipt (landlord's portion).	Particulars of receipt (tenant's portion).
1. Serial number of receipt.	1. Serial number of receipt.
2. Name of village, pargana, thana.	2. Name of village, paragana, thana.
3. (a) Name of the estate and <i>tausi</i> number to which the land appertains, and (b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.	3. (a) Name of the estate and <i>tausi</i> number to which the land appertains, and (b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.
4. Name or names of the landlord or landlords and the nature of their interest.	4. Name or names of the landlord or landlords and the nature of their interest.
5. Tenants' name.	5. Tenants' name.
6. Particulars of the tenure or holding for which rent is paid,— (a) Serial number of the landlords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it. (b) Area. (c) Annual rent (cash or fixed quantity of produce or both as the case may be). (d) Annual road and public works cesses. (e) <i>Jalkar</i> , <i>bankar</i> , and <i>phalkar</i> .	6. Particulars of the tenure or holding for which rent is paid,— (a) Serial number of the landlords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it. (b) Area. (c) Annual rent (cash or fixed quantity of produce or both as the case may be). (d) Annual road and public works cesses. (e) <i>Jalkar</i> , <i>bankar</i> and <i>phalkar</i> .
7. Amount paid, specifying for which of the items (c), (d) and (e) and for which year and <i>kist</i> .	7. Amount paid, specifying for which of the items (c), (d), and (e) and for which year and <i>kist</i> .
8. Date of payment.	8. Date of payment.
9. Signature of landlord or his authorized agent.	9. Signature of landlord or his authorized agent.

¹Sch. II was substituted for former schedule by s. 180 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).²These words were substituted for the word "Account" by s. 16 (a) of the Bengal Tenancy (Amendment) Act, 1980 (Ben. Act II of 1980).

of 1930.]

(Schedule II.—Particulars of receipt and of statement account.)

{ Particulars of statement of account. (Landlord's portion.)	{Particulars of statement of account. (Tenant's portion.)
1. Serial number of receipt.	1. Serial number of receipt.
2. Name of village, pargana, thana.	2. Name of village, paragana, thana.
3. (a) Name of the estate and <i>tauzi</i> number to which the land appertains, and	3. (a) Name of the estate and <i>tauzi</i> number to which the land appertains, and
(b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.	(b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.
4. Name or names of the landlord or landlords and the nature of their interest.	4. Name or names of the landlord or landlords and the nature of their interest.
5. Tenant's name.	5. Tenant's name.
6. Particulars of the tenure or holding for which rent is paid,—	6. Particulars of the tenure or holding for which rent is paid,—
(a) Serial number of the landlords' rent-roll and if a record-of-rights has been prepared, serial number of the tenancy in it.	(a) Serial number of the landlords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it.
(b) Area.	(b) Area.
(c) Annual rent (cash or fixed quantity of produce or both as the case may be).	(c) Annual rent (cash or fixed quantity of produce or both as the case may be).
(d) Annual road and public works cesses.	(d) Annual road and public works cesses.
(e) <i>Jalkar, bankar</i> and <i>phalkar</i> .	(e) <i>Jalkar, bankar</i> and <i>phalkar</i> .
7. Amounts due at the beginning of the year —	7. Amounts due at the beginning of the year—
(a) under each of the items (c), (d) and (e) and for which years; and	(a) under each of the items (c) (d) and (e) and for which years; and
(b) as interest on above.	(b) as interest on above.
8. Amounts paid during the year against each of the above dues, with dates of payment and serial number of the rent-receipt granted.	8. Amounts paid during the years against each of the above dues, with dates of payment and serial number of the rent-receipt granted.
9. Amount remaining due at the end of the year.	9. Amounts remaining due at the of the year.
10. Date of the statement of account.	10. Date of the statement of account
11. Signature of landlord or his authorized agent.	11. Signature of landlord or his authorized agent.

¹These words were substituted for the words "Particulars of account" by s. 16 (b) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

(Schedule III.—Limitation.)

SCHEDULE III.

LIMITATION.

(See section 184.)

PART I.—Suits.

Description of suit.	Period of limitation.	Time from which period begins to run.
1. To eject any tenure-holder ¹ [<i>raiyat</i> or under- <i>raiyat</i>] on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year	The date of the breach.
² 1 (a) To eject a non-occupany- <i>raiyat</i> ³ [or under- <i>raiyat</i>] on the ground of the expiration of the term of his lease.	Six months	The expiration of the term.
2. For the recovery of an arrear of rent ⁴ [in a suit brought by— (i) a sole landlord, (ii) the entire body of landlords, or (iii) one or more co-sharer landlords—] (a) when the arrear fell due before a	Six months	The date of the service of notice of the

¹These words were substituted for the words "or *raiyat*" by s. 17(1) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

²Article 1 (a) was inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

³These words were inserted by s. 17 (2) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

⁴The words within square brackets were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

of 1885.]

(Schedule III.—Limitation.)

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>deposit was made under section 61 on account of the rent of the same¹[tenure or holding].</p> <p>(b) in other cases ..</p>	Three years	<p>deposit²[or presentation of the postal money-order, as the case may be].</p> <p>³The last day of the agricultural year in which the arrear fell due.</p>
3. To recover possession of land claimed by the plaintiff as ⁴ [a <i>raiyat</i> or an under- <i>raiyat</i>].	Two years	The date of dispossession.

PART II.—Appeals.

Description of appeal.	Period of limitation.	Time from which period begins to run.
4. From any decree or order under this Act, to the Court of a District Judge or Special Judge.	Thirty days	The date of the decree or order appealed against.
5. From any order of a Collector under this Act, to the Commissioner.	Thirty days	The date of the order appealed against.

¹These words were substituted for the word "holding" by s. 131 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words were inserted by s. 131, *ibid*.

³This entry was substituted for the original entry, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁴These words were substituted for the words "an occupancy-*raiyat*", for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

(Schedule III.—Limitation.)

PART III.—Applications.

Description of application.	Period of limitation.	Time from which period begins to run.
<p>6. For the execution of a decree or order made¹[in a suit between landlord and tenant to whom the provisions of this Act are applicable,] and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, ²[1908]: ³Provided that, where a sale in execution of arrears of rent is set aside on application, the proceedings in execution shall continue and the time between the date of such sale and the date of the order setting it aside shall be excluded from the period of limitation provided by this Article.</p>	Three years	<p>(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been review of judgment, the date of the decision passed on the review.</p>

IX of 1908.

¹These words were substituted for the words "under this Act, or any Act repealed by this Act," for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²This figure was substituted for the figure "1877" by s. 132 (1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³This proviso was added by s. 132 (2), *ibid.*

Act XII of 1887.

(The Bengal, Agra and Assam Civil Courts Act, 1887.)

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Act XII of 1887.

(The Bengal, Agra and Assam Civil Courts Act, 1887.)¹

(11th March 1887.)

An Act to consolidate and amend the law relating to Civil Courts in Bengal, [the North-Western Provinces and Assam.]

Whereas it is expedient to consolidate and amend the law relating to Civil Courts in Bengal, [*the North-Western Provinces and Assam*]; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal, ²[Agra] and Assam Civil Courts Act, 1887.

Title, extent and commencement.

(2) It extends to the territories ³[which were on the 11th of March, 1887,] respectively administered by the Lieutenant-Governor of Bengal, [*the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Assam,*] except such portions of those territories as for the time being are not subject to the ordinary civil jurisdiction of the High Courts ⁴* * * ; and

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see* Gazette of India, 1881, Pt. V, p. 1455; for Preliminary Report of the Select Committee, *see ibid*, 1886, Pt. V., p. 957; for Final Report, *see ibid*, 1887, Pt. V, p. 55; and for Proceedings in Council, *See ibid*, 1881, Supplement, pp. 1132, 1169, 1414 and 1423; *ibid*, 1886, Supplement, p. 1458; *ibid*; 1887, Pt. VI, pp. 31 and 33.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengal (among other territories), with the exception of the territories not subject to the ordinary civil jurisdiction of the High Court —*see* s. 1 (2).

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4 (2).

As to the jurisdiction of the High Court in Darjeeling, *see* the Darjeeling (High Court's Jurisdiction) Act, 1867 (XIX of 1867).

²This word was substituted for the words "North-Western Provinces" by s. 2 of the Bengal, Agra and Assam Civil Courts (Amendment) Act, 1911 (XVI of 1911).

³These words were substituted for the words "for the time being" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The words "and except the Jhansi Division, " which were repealed by the United Provinces Act, 1890 (XX of 1890) s. 9 (1), are omitted.

(Chapter I.—Preliminary.—Chapter II.—Constitution of Civil Courts.—Secs. 2—4.)

(3) It shall come into force on the first day of July, 1887.

2. (1) [*Repeal of Acts VI of 1871 and XIX of 1887.*] *Rep. by the Amending Act, 1891 (XII of 1891).*

Savings.

(2) ^{1*}. * All Courts constituted, appointments, nominations, rules and orders made, jurisdiction and powers conferred and lists published under the Bengal Civil Courts Act, 1871,² or any enactment thereby repealed, or purporting expressly or impliedly to have been so constituted, made, conferred and published, shall be deemed to have been respectively constituted, made, conferred and published under this Act; and

VI of 1871.

(3) Any enactment or document referring to the Bengal Civil Courts Act, 1871,² or to any enactment thereby repealed, shall be construed to refer to this Act or to the corresponding portion thereof.

CHAPTER II.

CONSTITUTION OF CIVIL COURTS.

Classes of Courts.

3. There shall be the following classes of Civil Courts under this Act, namely:—

- (1) the Court of the District Judge;
- (2) the Court of the Additional Judge;
- (3) the Court of the Subordinate Judge; and
- (4) the Court of the *Munsif*.

Number of District Judges, Subordinate Judges and *Munsifs*.

³4. The ⁴[Provincial Government] may alter the number of District Judges, Subordinate Judges and *Munsifs* now fixed.

¹The word "But", which was repealed by the Amending Act, 1891 (XII of 1891), is omitted

²Act VI of 1871 was repealed by section 2 (1) of the present Act.

³Section 4 was substituted for the former section 4 by the Devolution Act, 1920 (XXXVIII of 1920).

⁴These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India Adaptation of Indian Laws) Order, 1937.

[1937.]

(Chapter II.—*Constitution of Civil Courts.*—Secs. 5—8.)

5. [Number of Munsifs.] Rep. by the Decentralization Act, 1914 (IV of 1914).

6. (1) Whenever the office of District Judge or Subordinate Judge is vacant by reason of the death, resignation or removal of the Judge or other cause, or whenever ¹[an increase in the number of District or Subordinate Judges has been made under the provisions of section 4], the ²[Provincial Government or, as the case may be, the High Court] may fill up the vacancy or appoint the Additional District Judges or Subordinate Judges ³* * *

Vacancies among District or Subordinate Judges.

(2) Nothing in this section shall be construed to prevent a ⁴[Provincial Government] from appointing a District Judge or Subordinate Judge to discharge, for such period as it thinks fit, in addition to the functions devolving on him as such District Judge or Subordinate Judge, all or any of the functions of another District Judge or Subordinate Judge, as the case may be.

7. [Vacancies among Munsifs.] Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

8. (1) When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the ⁴[Provincial Government] may, ⁵[having consulted] the High Court, ⁶* * * appoint such Additional Judges as may be requisite.

Additional Judges.

(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and, in the discharge of those functions, they shall exercise the same powers as the District Judge.

¹These words were substituted for the words "the Governor General in Council has sanctioned an increase of the number of District Judges or Subordinate Judges" by the Decentralization Act, 1914 (IV of 1914).

²These words were substituted for the words "Local Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words "as the case may be" were omitted, *ibid*.

⁴See foot-note 4 on p. 730, *ante*.

⁵These words were substituted for the words "upon the recommendation of" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶The words "and with the previous sanction of the Governor General in Council," which were repealed by s. 3 of the Bengal Agra and Assam Civil Courts (Amendment) Act, 1911 (XVI of 1911), are omitted.

(Chapter II.—Constitution of Civil Courts.—Secs. 9—12.)

Administrative control of Courts.

8. Subject to the superintendence of the High Court, the District Judge shall have administrative control over all the Civil Courts under this Act within the local limits of his jurisdiction.

Temporary charge of District Court.

10. (1) In the event of the death, resignation or removal of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the Additional Judge, or, if an Additional Judge is not present at that place, the senior Subordinate Judge present thereat, shall, without relinquishing his ordinary duties, assume charge of the office of the District Judge, and shall continue in charge thereof until the office is resumed by the District Judge or assumed by an officer appointed thereto.

(2) While in charge of the office of the District Judge, the Additional Judge or Subordinate Judge, as the case may be, may, subject to any rules which the High Court may make in this behalf, exercise any of the powers of the District Judge.

Transfer of proceedings on vacation of office of Subordinate Judge.

11. (1) In the event of the death, resignation or removal of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the District Judge may transfer all or any of the proceedings pending in the Court of the Subordinate Judge either to his own Court or to any Court under his administrative control competent to dispose of them.

(2) Proceedings transferred under sub-section (1) shall be disposed of as if they had been instituted in the Court to which they are so transferred:

(3) Provided that the District Judge may re-transfer to the Court of the Subordinate Judge or his successor any proceedings transferred under sub-section (1) to his own or any other Court.

(4) For the purposes of proceedings which are not pending in the Court of the Subordinate Judge on the occurrence of an event referred to in sub-section (1), and with respect to which that Court has exclusive jurisdiction, the District Judge may exercise all or any of the jurisdiction of that Court.

12. *[Temporary charge of office of Munsif.]*
Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1887.]

(Chapter II.—Constitution of Civil Courts.—Secs. 13—15.)

13. (1) The ¹[Provincial Government] may, by notification in the *Official Gazette*, fix and alter the local limits of the jurisdiction of any Civil Court under this Act. Power to fix local limits of jurisdiction of Courts.

(2) If the same local jurisdiction is assigned to two or more Subordinate Judges or to two or more *Munsifs*, the District Judge may assign to each of them such civil business cognizable by the Subordinate Judge or *Munsif*, as the case may be, as, subject to any general or special orders of the High Court, he thinks fit.

(3) When civil business arising in any local area is assigned by the District Judge under sub-section (2) to one of two or more Subordinate Judges or to one of two or more *Munsifs*, a decree or order passed by the Subordinate Judge or *Munsif* shall not be invalid by reason only of the case in which it was made having arisen wholly or in part in a place beyond the local area if that place is within the local limits fixed by the ¹[Provincial Government] under sub-section (1).

(4) A Judge of a Court of Small Causes appointed to be also a Subordinate Judge or *Munsif* is a Subordinate Judge or *Munsif*, as the case may be, within the meaning of this section.

(5) The present local limits of the jurisdiction of every Civil Court under this Act shall be deemed to have been fixed under this section.

14. (1) The ¹[Provincial Government] may, by notification in the *Official Gazette*, fix and alter the place or places at which any Civil Court under this Act is to be held. Place of sittings of Courts.

(2) All places at which any such Courts are now held shall be deemed to have been fixed under this section.

15. (1) Subject to such orders as may be made by the ¹[Provincial Government] the High Court shall prepare a list of days to be observed in each year as closed holidays in the Civil Courts. Vacations of Courts.

¹See foot-note 4 on p. 730, *ante*.

²The words "by the Governor General in Council, in the case of the High Court at Calcutta, and" were omitted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words "in other cases" were omitted, *ibid*.

[Act XM

(Chapter II.—Constitution of Civil Courts.—Chapter
III.—Ordinary Jurisdiction.—Secs. 16—19.)

(2) The list shall be published in the ¹[*Official Gazette*].

(3) A judicial act done by a Civil Court on a day specified in the list shall not be invalid by reason only of its having been done on that day.

Seals of Courts.

16. Every Civil Court under this Act shall use a seal of such form and dimensions as are prescribed by the ²[*Provincial Government*].

Continuance
of proceedings of
Courts ceasing to
have
jurisdiction.

17. (1) Where any Civil Court under this Act has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein may be had in the Court to which the business of the former Court has been transferred.

(2) Nothing in this section applies to cases for which provision is made ³[in sections 36, 37 and 114 of, and rule 1 of Order XLVII in Schedule I to the Code of Civil Procedure, 1908,] or in any other enactment for the time being in force.

Act V of
1908.

CHAPTER III.

ORDINARY JURISDICTION.

Extent of
original juris-
diction of
District or
Subordinate
Judge.

18. Save as otherwise provided by any enactment for the time being in force, the jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions of section 15 of the Code of Civil Procedure ⁴[, 1908,] to all original suits for the time being cognizable by Civil Courts.

Extent of
jurisdiction
of *Munsifs*.

19. (1) Save as aforesaid, and subject to the provisions of sub-section (2), the jurisdiction of a *Munsif* extends to all like suits of which the value does not exceed one thousand rupees.

¹These words were substituted for the words "local official Gazette" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 4 on p. 730, *ante*.

³These words and figures were substituted for the words and figures "in section 623 or section 649 of the Code of Civil Procedure" by s. 3 of the Bengal, Agra and Assam Civil Courts (Bengal Amendment) Act, 1935 (Ben. Act XIX of 1935).

⁴Tn is figure was inserted by s. 4, *ibid*.

of 1887.]

(Chapter III.—Ordinary Jurisdiction.—Secs. 20, 21.)

(2) The ¹[Provincial Government] may, on the recommendation of the High Court, direct, by notification in the *Official Gazette*, with respect to any *Munsif* named therein—

²(a) that his jurisdiction shall extend to all like suits of such value not exceeding two thousand rupees as may be specified in the notification, or

²(b) that so long as he holds Court at a place where the Court of a Subordinate Judge is held his jurisdiction shall extend to all like suits of such value not exceeding three thousand five hundred rupees as may be so specified:

³Provided that the ¹[Provincial Government] may, by notification in the ⁴[*Official Gazette*], delegate to the High Court its powers under this section.

20. (1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge shall lie to the High Court.

Appeals from District and Additional Judges.

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court.

21. (1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie—

Appeals from Subordinate Judges and *Munsifs*.

(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed five thousand rupees, and

(b) to the High Court in any other case.

(2) Save as aforesaid, an appeal from a decree or order of a *Munsif* shall lie to the District Judge.

(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or

¹See foot-note 4 on p. 730, *ante*.

²Clauses (a) and (b) were substituted for the original words by s. 5 of the Bengal, Agra and Assam Civil Courts (Bengal Amendment) Act, 1935 (Ben. Act XIX of 1935).

³This proviso was added by the Decentralization Act, 1914 (IV of 1914).

⁴These words were substituted for the words "local official Gazette" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter III.—*Ordinary Jurisdiction*.—Chapter IV.—*Special Jurisdiction*.—Secs. 22, 23.)

sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

(4) The High Court may, with the previous sanction of the ¹[Provincial Government], direct, by notification in the *Official Gazette*, that appeals lying to the District Judge under sub-section (2) from all or any of the decrees or orders of any *Munsif* shall be preferred to the Court of such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly.

CHAPTER IV.

SPECIAL JURISDICTION.

Power to transfer to Subordinate Judges appeals from *Munsifs*.

22. (1) A District Judge may transfer to any Subordinate Judge under his administrative control any appeals pending before him from the decrees or orders of *Munsifs*.

(2) The District Judge may withdraw any appeal so transferred, and either hear and dispose of it himself or transfer it to a Court under his administrative control competent to dispose of it.

(3) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge.

Exercise by Subordinate Judge or *Munsif* of Jurisdiction of District Court in certain proceedings.

23. (1) The High Court may, by general or special order, authorize any Subordinate Judge or *Munsif* to take cognizance of, or any District Judge to transfer to a Subordinate Judge or *Munsif* under his administrative control, any of the proceedings next hereinafter mentioned or any class of those proceedings specified in the order.

(2) The proceedings referred to in sub-section (1) are the following, namely:—

- (a) Proceedings under ²[the Bengal Wills and Intestacy Regulation, 1799];

Reg. V of 1799.

¹See foot-note 4 on p. 730, *ante*.

²These words and figure were substituted for the original words by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

³Clauses (b) and (c) were repealed by the Guardians and Wards Act, 1890 (VIII of 1890) and the Succession Certificate Act, 1889 (VII of 1889), respectively, and are omitted.

[1887.]

(Chapter IV.—Special Jurisdiction.—Secs. 24, 25.)

XXXIX
of 1925.

(d) proceedings under ¹[the Indian Succession Act, 1925,] which cannot be disposed of by District Delegates; and

(3) The District Judge may withdraw any such proceedings taken cognisance of by, or transferred to, a Subordinate Judge or *Munsif*, and may either himself dispose of them or transfer them to a Court under his administrative control competent to dispose of them.

24. (1) Proceedings taken cognisance of by, or transferred to, a Subordinate Judge or *Munsif*, as the case may be, under the last foregoing section shall be disposed of by him subject to the rules applicable to like proceedings when disposed of by the District Judge: Disposal of proceedings referred to in last foregoing section.

Provided that an appeal from an order of a *Munsif* in any such proceeding shall lie to the District Judge.

(2) An appeal from the order of the District Judge on the appeal from the order of the *Munsif* under this section shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

IX of 1887.

25. The ¹[Provincial Government] may, by notification in the *Official Gazette*, confer, within such local limits as it thinks fit, upon any Subordinate Judge or *Munsif* the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, for the trial of suits, cognizable by such Courts, up to such value not exceeding ⁴[seven hundred and fifty rupees] in the case of a Subordinate Judge or ⁵[three hundred rupees] in the case of a *Munsif* as it thinks fit, and may withdraw any jurisdiction so conferred: Power to invest Subordinate Judges and *Munsifs* with Small Cause Court jurisdiction.

¹These words and figure were substituted for the words and figures "the Indian Succession Act, 1865, and the Probate and Administration Act, 1881" by s. 6 (1) of the Bengal, Agra and Assam Civil Courts (Bengal Amendment) Act, 1935 (Ben. Act XIX of 1935).

²Clause (e) was omitted by s. 6 (2), *ibid*.

³See foot-note 4 on p. 730, *ante*.

⁴These words were substituted for the words "five hundred rupees" by s. 7 of the Bengal, Agra and Assam Civil Courts (Bengal Amendment) Act, 1935 (Ben. Act XIX of 1935).

⁵These words were substituted for the words "two hundred and fifty rupees" by s. 7, *ibid*.

(Chapter VII.—Supplemental Provisions.—Secs. 26—36.)

¹Provided that the ²[Provincial Government] may, by notification in the ³[Official Gazette], delegate to the High Court its powers under this section.

26 to 35. (Chapters V and VI.) Omitted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

Power to confer powers of Civil Courts on officers.

36. (1) The ²[Provincial Government] may invest with the powers of any Civil Court under this Act, by name or in virtue of office,—

(a) any officer in the [*Chota Nagpur, ⁴Shambalpur,*] Jalpaiguri or Darjeeling district [*or in any part of the territories administered by the Chief Commissioner of Assam, except the district of Sylhet,*] or,

(b) after consultation with the High Court, any officer serving in any other part of the territories to which this Act extends and belonging to a class defined in this behalf by the ²[Provincial Government] * * *

(2) Nothing in ⁴[sections 4, 5, 6, 8, 10 or 11] applies to any officer so invested, but all the other provisions of this Act shall, so far as those provisions can be made applicable, apply to him as if he were a Judge of the Court with the powers of which he is invested.

¹This proviso was added by the Decentralization Act, 1914 (IV of 1914).

²See foot-note 4 on p. 730, *ante*.

³These words were substituted for the words "local official Gazette" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴This word "Sambalpur" was inserted by s. 6 of the Sambalpur Civil Courts Act, 1906 (Ben. Act IV of 1906).

⁵The words "with the previous sanction of the Governor General in Council" were omitted by the Devolution Act, 1920 (XXXVIII of 1920).

⁶These words and figures were substituted for the words and figures "sections 4 to 8 (both inclusive), or sections 10 to 12 (both inclusive), or sections 27 to 35 (both inclusive)" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.

of 1887.]

(Chapter VII.—Supplemental Provisions.—Secs. 37, 38.)

(3) Where, in the territories mentioned in clause (a) of sub-section (1), the same local jurisdiction is assigned to two or more officers invested with the powers of a *Munsif*, the officer invested with the powers of the District Judge may, with the previous sanction of the '[Provincial Government], delegate his functions under sub-section (2) of section 13 to an officer invested with the powers of a Subordinate Judge or to one of the officers invested with the powers of a *Munsif*.

(4) Where the place at which the Court of an officer invested with powers under sub-section (1) is to be held has not been fixed under section 14, the Court may be held at any place within the local limits of its jurisdiction.

37. (1) Where in any suit or other proceeding it is necessary for a Civil Court to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution, the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, shall form the rule of decision except in so far as such law has, by legislative enactment, been altered or abolished.

Certain decisions to be according to Native law.

(2) In cases not provided for by sub-section (1) or by any other law for the time being in force, the Court shall act according to justice, equity and good conscience.

38. (1) The presiding officer of a Civil Court shall not try any suit or other proceeding to which he is a party or in which he is personally interested.

Judges not to try suits in which they are interested.

(2) The presiding officer of an appellate Civil Court under this Act shall not try an appeal against a decree or order passed by himself in another capacity.

(3) When any such suit, proceeding or appeal as is referred to in sub-section (1) or sub-section (2) comes before any such officer, the officer shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

(4) The superior Court shall thereupon dispose of the case under '[section 24 of the Code of Civil Procedure, 1908].

Act V of 1908.

¹See foot-note 4 on p. 730, ante.

²Section 37 is repealed in so far as it is inconsistent with the provisions of the Muslim Personal Law (*Shariat*) Application Act, 1937 (XXVI of 1937).

³These words and figures were substituted for the words and figure "section 25 of the Code of Civil Procedure" by s. 8 of the Bengal, Agra and Assam Civil Courts (Bengal Amendment) Act, 1935 (Ben. Act XIX of 1935).

745 *The Bengal, Agra and Assam Civil Courts
Act, 1887.*

[Act XII of 1887.]

(Chapter VII.—*Supplemental Provisions.*—Secs. 39, 40.)

(5) Nothing in this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

Subordination
of Courts to
District Court.

39. For the purposes of the last foregoing section the presiding officer of a Court subject to the administrative control of the District Judge shall be deemed to be immediately subordinate to the Court of the District Judge, and, for the purposes of the Code of Civil Procedure ¹[1908,] the Court of such an officer shall be deemed to be of a grade inferior to that of the Court of the District Judge.

Act V of
1908.

Application
of Act to
Provincial
Courts of
Small Causes.

40. (1) This section and sections 15, 32, 37, 38 and 39 apply to Courts of Small Causes constituted under the Provincial Small Cause Courts Act, 1887.

IX of
1887.

(2) Save as provided by that Act, the other sections of this Act do not apply to those Courts.

¹This figure was inserted by s. 4 of the Bengal, Agra and Assam Civil Courts (Bengal Amendment) Act, 1935 (Ben. Act XIX of 1935).

Act XI of 1893.

(The Tributary Mahals of Orissa Act, 1893.)¹

(21st September 1893.)

An Act to make provision for certain matters connected with the Tributary Mahals of Orissa.

Whereas it is expedient * * * to indemnify certain persons and validate acts done by them in, or in relation to, the said *Mahals*, and to admit of certain sentences passed in those *Mahals* being carried into effect in British India; It is hereby enacted as follows:—

1. (1) This Act may be called the Tributary Mahals of Orissa Act, 1893. Title and extent.

(2) It extends to the whole of British India;

[Commencement.] Rep. by the Amending Act, 1903 (I of 1903).

2. [Repeal.] Rep. by the Amending Act, 1903 (I of 1903).

3. No suit, prosecution or other proceeding shall be begun or continued in respect of any act done before the commencement of this Act by any officer of the Government in respect of any of the Tributary *Mahals* of Orissa or any inhabitant thereof, such act purporting to have been done in the exercise of executive or judicial authority, and having, before or after the commencement of this Act, been ratified by the Government; and every such act is hereby confirmed and made valid, and every such officer indemnified and discharged from liability in respect thereof. Indemnity in respect of acts done before the commencement of this Act.

4. (1) ³[The Provincial Government of Bengal, Bihar or Orissa] may authorize the reception, detention Execution in British India of certain sentences passed in Tributary Mahals.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons see Gazette of India, 1893, Pt. V, p. 96; and for Proceedings in Council, see *ibid*, Pt. VI, pp. 191, 196, 202 and 203.

The application of this Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 4 (2).

²The words "to repeal certain enactments relating to the Tributary *Mahals* of Orissa, and" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

³These words were substituted for the words "The Lieutenant-Governor of Bengal" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Act XI of 1893.]

(*Sec. 4—Schedule.*)

or imprisonment in any place '[in the Province], for the period specified in the sentence, of—

(a) any person sentenced to imprisonment or transportation for any term by any Court or tribunal acting under the authority of '[the Crown] in, or in respect of, any Tributary Mahal in Orissa;

(b) any Native Indian subject of Her Majesty residing in any such Mahal, or any Native subject of a Chief of any such Mahal, when, in either case, such Native subject as aforesaid has been sentenced by such a Chief or by a subordinate Court of such a Chief to imprisonment for a term exceeding six months.

(2) The place or places ^{3*} * in which persons may be received, detained or imprisoned under sub-section (1) shall be such as ⁴[the Provincial Government concerned] may, by general or special order, direct.

(3) A sentence shall be of the same force and effect in the place in which it may be carried into effect under this section as if it had been passed by a competent Court in that place.

THE SCHEDULE.

[*Enactments repealed.*]

Rep. by the Amending Act, 1903 (I of 1903).

¹These words were substituted for the words "under his Government", by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "the British Government," *ibid.*

³The words "within the territories subject to the Lieutenant-Governor of Bengal" were omitted, *ibid.*

⁴These words were substituted for the words "the said Lieutenant-Governor", *ibid.*

Act II of 1899.

(The Indian Stamp Act, 1899.)

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SCHEDULE II.—(*Repealed.*)

Act II of 1899.

(THE INDIAN STAMP ACT, 1899.)¹

(27th January 1899.)

An Act to consolidate and amend the law relating to stamps.

WHEREAS it is expedient to consolidate and amend the law relating to Stamps; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Indian Stamp Act, 1899. Short title, extent and commencement.

(2) It extends to the whole of British India, inclusive of ²* * British Baluchistan, the Santhal Parganas, and the Pargana of Spiti; and

(3) It shall come into force on the first day of July, 1899.

2. In this Act, unless there is something repugnant in the subject or context,— Definitions.

(1) "banker" include a bank and any person acting as a banker: "Banker".

XXVI of
1881.

(2) "bill of exchange" means a bill of exchange as defined by the Negotiable Instruments Act, 1881, and includes also a hundi, and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money: "Bill of exchange".

(3) "bill of exchange payable on demand" includes— "Bill of exchange payable on demand."

(a) an order for the payment of any sum of money by a bill of exchange or promissory note,

¹For Statement of Objects and Reasons, see Gazette of India, 1897, Pt. V, p. 175; for Report of the Select Committee, see *ibid*, 1898, Pt. V, p. 231; and for Proceedings in Council, see *ibid*, 1898, Pt. VI, pp. 10 and 278; and *ibid*, 1899, Pt. VI, p. 5.

²The words "Upper Burma" which were repealed by the Repealing and Amending Act, 1914 (X of 1914), are omitted.

(Chapter 1.—Preliminary.—Sec. 2.)

or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen;

(b) an order for the payment of any sum of money weekly, monthly or at any other stated periods; and

(c) a letter of credit, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn:

“Bill of lading”.

(4) “bill of lading” includes a “through bill of lading,” but does not include a mate’s receipt:

“Bond.”

(5) “bond” includes—

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another:

“Chargeable.”

(6) “chargeable” means, as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in British India when such instrument was executed or, where several persons executed the instrument at different times, first executed:

“Cheque.”

(7) “chaque” means a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand:

1* * * *

‘Clause 8 (definition of “Chief Controlling Revenue-authority”) was omitted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1957.’

[1929.]

(Chapter I.—Preliminary.—Sec. 2.)

(9) "Collector"—

"Collector."

(a) means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively, and, without those limits, the Collector of a district; and

(b) includes a Deputy Commissioner and any officer whom ¹[the collecting Government] may, by notification in the *Official Gazette*, appoint in this behalf:

(10) "conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule I ²[or by Schedule IA, as the case may be]: "Conveyance."

(11) "duly stamped," as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount, and that such stamp has been affixed or used in accordance with the law for the time being in force in British India: "Duly stamped."

(12) "executed" and "execution," used with reference to instruments, mean "signed" and "signature": "Executed" and "execution."

³(12a) "collecting Government" means—

(a) in relation to stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts, and in relation to any other stamp duty chargeable under this Act and falling within item 59 in List I in the Seventh Schedule to the Government of India Act, 1935, the Central Government; "Collecting Government"

(b) save as aforesaid, the Provincial Government:

(13) "impressed stamp" includes—

"Impressed stamp."

(a) labels affixed and impressed by the proper officer, and

26 Geo. V,
C. 2.

¹These words were substituted for the words "the Local Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were added by s. 3 of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

³Clause (12a) was inserted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter I.—Preliminary.—Sec. 2.)

(b) stamps embossed or engraved on stamped paper:

"Instrument."

(14) "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded:

"Instrument of partition."

(15) "instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority or any Civil Court and an award by an arbitrator directing a partition:

"Lease."

(16) "lease" means a lease of immovable property, and includes also—

- (a) a patta;
- (b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immovable property;
- (c) any instrument by which tolls of any description are let;
- (d) any writing on an application for a lease intended to signify that the application is granted:

"Marketable security."

¹(16a) "marketable security" means a security of such a description as to be capable of being sold in any stock market in British India or in the United Kingdom:

"Mortgage-deed."

(17) "mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to, or in favour of, another, a right over or in respect of specified property:

"Paper."

(18) "paper" includes vellum, parchment or any other material on which an instrument may be written:

"Policy of insurance."

(19) "policy of insurance" includes—

- (a) any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event;

¹Clause (16a) was added by s. 2 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

of 1881.]

(Chapter 1.—Preliminary.—Sec. 2.)

- (b) a life-policy, and any policy insuring any person against accident or sickness, and any other personal insurance:^{1*}

(20) "policy of sea-insurance" or "sea-policy"—

"Policy of sea-insurance" or "sea-policy."

- (a) means any insurance made upon any ship or vessel (whether for marine or inland navigation), or upon the machinery, tackle or furniture of any ship or vessel, or upon any goods, merchandise or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in, or relating to, any ship or vessel; and
- (b) includes any insurance of goods, merchandise or property for any transit which includes not only a sea risk within the meaning of clause (a), but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance:

Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise or property from any risk, loss or damage, such agreement or engagement shall be deemed to be a contract for sea-insurance:

(21) "power-of-attorney" includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it:

"Power-of-attorney."

(22) "promissory note" means a promissory note as defined by the Negotiable Instruments Act, 1881;

"Promissory note."

XXVI of
1881.

it also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or

¹Sub-clause (c) and the word "and" prefixed thereto which were repealed by s. 2 of the Indian Stamp (Amendment) Act, 1906 (V of 1906), are omitted.

(Act 4)

(Chapter I.—Preliminary.—Sec. 2.)

contingency which may or may not be performed or happen :

"Receipt."

(23) "receipt" includes any note, memorandum or writing—

- (a) whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received, or
- (b) whereby any other movable property is acknowledged to have been received in satisfaction of a debt, or
- (c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or
- (d) which signifies or imports any such acknowledgment,

and whether the same is or is not signed with the name of any person : ¹*

"Settlement."

(24) "settlement" means any non-testamentary disposition, in writing, of movable or immovable property made—

- (a) in consideration of marriage,
- (b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or
- (c) for any religious or charitable purpose ;

and includes an agreement in writing to make such a disposition ²[and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition] :

³[and

"Soldier."

(25) "Soldier" includes any person below the rank of non-commissioned officer who is enrolled under the Indian Army Act, 1911.]

VIII of
1911.

¹The word "and" was omitted by the Repealing and Amending Act, 1928 (XVIII of 1928).

²These words were added by s. 2 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

³These words and figures within square brackets were inserted by the Repealing and Amending Act, 1928 (XVIII of 1928).

of 1899.]

(Chapter II.—Stamp-duties.—Sec. 3.)

CHAPTER II.

STAMP-DUTIES.

A.—Of the Liability of Instruments to Duty.

3. Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that schedule as the proper duty therefor, respectively, that is to say—

Instruments chargeable with duty.

- (a) every instrument mentioned in that schedule which, not having been previously executed by any person, is executed in British India on or after the first day of July, 1899;
- (b) every bill of exchange ¹[payable otherwise than on demand] ²*or promissory note drawn or made out of British India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred, or otherwise negotiated, in British India; and
- (c) every instrument (other than a bill of exchange ²*or promissory note) mentioned in that schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India and is received in British India:

¹Provided that, except as otherwise expressly provided in this Act, and notwithstanding anything contained in clauses (a), (b) or (c) of this section or in Schedule I, the amount indicated in Schedule I to this Act shall, subject to the exemptions contained in that schedule, be the duty chargeable under this Act on the following instruments, mentioned in clauses (aa) and (bb) of this proviso, as the proper duty therefor respectively,—

- (aa) every instrument, mentioned in Schedule I as chargeable with duty under that schedule,

¹These words were inserted by s. 5 of the Indian Finance Act 1927 (V of 1927).

²The word "cheque" was omitted, *ibid.*

³This proviso was inserted by s. 4(1) of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

(Chapter II.—Stamp-duties.—Sec. 4.)

which, not having been previously executed by any person, is executed in Bengal on or after the first day of April, 1922; and

- (bb) every instrument mentioned in Schedule IA as chargeable with duty under that schedule, which, not having been previously executed by any person, is executed out of Bengal on or after the first day of April, 1922, and relates to any property situated, or to any matter or thing done or to be done, in Bengal and is received in Bengal:

Provided ¹[also] that no duty shall be chargeable in respect of—

- (1) any instrument executed by, or on behalf of, or in favour of, the ²[Crown] in cases where, but for this exemption, the ²[Crown] would be liable to pay the duty chargeable in respect of such instrument;
- (2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894, or under Act XIX of 1838, or the Indian Registration of Ships Act, 1841, as amended by subsequent Acts.

57 & 58
Vict., c-60
X of 1841.

Several
instruments
used in
single trans-
action of sale,
mortgage or
settlement.

4. (1) Where in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I ³[or in Schedule IA, as the case may be] for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one rupee ⁴[if the principal instrument be chargeable with the duty prescribed in Schedule I, or with a duty

¹This word was inserted by s. 4(2) of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

²This word was substituted for the word "Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were inserted by s. 5(a) of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

⁴These words were substituted for the words "instead of the duty (if any) prescribed for it in that Schedule," by s. 5(b), *ibid.*

of 1899.]

(Chapter II.—Stamp-duties.—Secs. 5, 6.)

of ¹[two rupees], if the principal instrument be chargeable with the duty prescribed in Schedule IA, instead of the duty (if any) prescribed for such other instrument in Schedule I or Schedule IA, as the case may be.]

(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument:

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

5. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

Instruments relating to several distinct matters.

6. Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I ⁴[or in Schedule IA, as the case may be,] shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties:

Instruments coming within several descriptions in Schedule I or in Schedule IA.

Provided that nothing in this Act contained shall render chargeable with duty exceeding ³[two rupees] a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid ⁵[unless it falls within the provisions of section 6A.]

¹These words were substituted for the words "one rupee eight annas" by s. 3 of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

²These words were inserted by s. 6(2) of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

³These words were substituted for the words "one rupee eight annas" as previously amended by s. 6(2) of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922), by s. 4. of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

⁴These words were inserted by s. 6(1) of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

⁵These words were added by s. 6(2), *ibid.*

[Act II

(Chapter II.—Stamp-duties.—Secs. 6A, 7.)

Payment of
Bengal Stamp
duty on copies,
counterparts
or duplicates
when that
duty has not
been paid on
the principal
or original
instrument.

¹6A. (1) Notwithstanding anything contained in sections 4 or 6 or in any other law unless it is proved that the duty chargeable under the Bengal Stamp (Amendment) Act, 1922, ²[or the Indian Stamp (Bengal Amendment) Act, 1935] has been paid

Ben. Act
III of
1922. Ben.
Act XII
of 1935.

- (a) on the principal or original instrument as the case may be, or
- (b) in accordance with the provisions of this section,

the duty chargeable on an instrument of sale, mortgage or settlement other than a principal instrument or on a counterpart, duplicate or copy of any instrument shall, if the principal or original instrument would, when received in Bengal, have been chargeable under the Bengal Stamp (Amendment) Act, 1922 ¹[or the Indian Stamp (Bengal Amendment) Act, 1935] with a higher rate of duty, be the duty with which the principal or original instrument would have been chargeable under section 19A.

(2) Notwithstanding anything contained in any law, no instrument, counterpart, duplicate or copy chargeable with duty under this section shall be received in evidence as properly stamped unless the duty chargeable under this section has been paid thereon:

Provided that a Court before which any such instrument, counterpart, duplicate, or copy is produced, may, in its discretion, permit the duty chargeable under this section to be paid thereon, and may then receive it in evidence.

Policies of
sea-insurance.

7. (1) No contract for sea-insurance (other than such insurance as is referred to in section 506 of the Merchant Shipping Act, 1894) shall be valid unless the same is expressed in a sea-policy.

57 & 58
Vict., c. 60.

(2) No sea-policy made for time shall be made for any time exceeding twelve months.

(3) No sea-policy shall be valid unless it specifies the particular risk or adventure, or the time, for which it is made, the names of the subscribers or underwriters, and the amount or amounts insured.

¹Section 6A was added by s. 7 of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

²These words were inserted by s. 5 of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

of 1899.]

(Chapter II.—Stamp-duties.—Sec. 8.)

(4) Where any sea-insurance is made for or upon a voyage and also for time, or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor, the policy shall be charged with duty as a policy for or upon a voyage, and also with duty as a policy for time.

XI of 1879. 8. (1) Notwithstanding anything in this Act, any local authority raising a loan under the provisions of the Local Authorities Loan Act, 1879, or of any other law for the time being in force, by the issue of bonds, debentures or other securities, shall, in respect of such loan, be chargeable with a duty of ²[one per centum] on the total amount of the bonds, debentures or other securities issued by it, and such bonds, debentures or other securities need not be stamped, and shall not be chargeable with any further duty on renewal, consolidation, subdivision or otherwise.

Bonds,
debentures
or other
securities
issued on
loans under
Act XI, 1879.

(2) The provisions of sub-section (1) exempting certain bonds, debentures or other securities from being stamped and from being chargeable with certain further duty shall apply to the bonds, debentures or other securities of all outstanding loans of the kind mentioned therein, and all such bonds, debentures or other securities shall be valid, whether the same are stamped or not:

Provided that nothing herein contained shall exempt the local authority which has issued such bonds, debentures or other securities from the duty chargeable in respect thereof prior to the twenty-sixth day of March, 1897, when such duty has not already been paid or remitted by order issued by the ³[Central Government].

(3) In the case of wilful neglect to pay the duty required by this section, the local authority shall be liable to forfeit to the Government a sum equal to ten per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

¹See now Act IX of 1914.

²These words were substituted for the words "eight annas per centum" by s. 2 of the Indian Stamp (Amendment) Act, 1910 (VI of 1910).

³These words were substituted for the words "Governor General in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter II.—Stamp-duties.—Secs. 9, 10.)

Power to
reduce, remit
or compound
duties.

9. ¹[The collecting Government] may, by rule or order published in the ²[*Official Gazette*],—

- (a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of ³[the territories under its administration], the duties with which any instruments, or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and
- (b) provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of debentures, bonds or other marketable securities.

B.—Of Stamps and the mode of using them.

Duties how
to be paid.

10. (1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

- (a) according to the provisions herein contained; or
- (b) when no such provision is applicable thereto—as the ⁴[collecting Government] may by rule direct.

(2) The rules made under sub-section (1) may, among other matters, regulate,—

- (a) in the case of each kind of instrument—the description of stamps which may be used;
- (b) in the case of instruments stamped with impressed stamps—the number of stamps which may be used;

¹These words were substituted for the words "The Governor General in Council" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "Gazette of India" by paragraph 4(1), *ibid.*

³These words were substituted for the words "British India", by the 1st Sch., *ibid.*

⁴These words were substituted for the words "Governor General in Council", *ibid.*

of 1930.]

(Chapter 11.—Stamp-duties.—Secs. 11—13.)

- (c) in the case of bills of exchange or promissory notes written in any Oriental language—the size of the paper on which they are written.

11. The following instruments may be stamped with adhesive stamps, namely:— Use of adhesive stamps.

- (a) instruments chargeable with the duty of one anna ¹[or half an anna], except parts of bills of exchange payable otherwise than on demand and drawn in sets;
- (b) bills of exchange, ²and promissory notes drawn or made out of British India;
- (c) entry as an advocate, vakil or attorney on the roll of a High Court;
- (d) notarial acts; and
- (e) transfers by endorsement of shares in any incorporated company or other body corporate.

12. (1) (a) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again; and Cancellation of adhesive stamps.

(b) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.

13. Every instrument written upon paper stamped with an impressed stamp shall be written in such Instruments stamped with impressed stamps how to be written.

¹These words were inserted by s. 3 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

²The word "cheques" was omitted by s. 5 of the Indian Finance Act, 1927 (V of 1927).

(Chapter II.—Stamp-duties.—Secs. 14—18.)

manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

Only one
instrument
to be on
stamp.

14. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written :

Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

Instrument
written
contrary to
section 13 or
14 deemed
unstamped.

15. Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped.

Denoting
duty.

16. Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application is made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument, by endorsement under the hand of the Collector or in such other manner (if any) as the ¹[collecting Government] may by rule prescribe.

C.—Of the time of stamping instruments.

Instruments
executed in
British India.

17. All instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of execution.

Instruments
other than
bills,
and notes
executed
out of
British India.

18. (1) Every instrument chargeable with duty executed only out of British India, and not being a bill of exchange, ²*or promissory note, may be stamped within three months after it has been first received in British India.

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector,

¹See foot-note 4 on p. 758, *ante*.

²The word "cheque" was omitted by s. 5 of the Indian Finance Act, 1927 (V of 1927).

of 1922.]

(Chapter II.—Stamp-duties.—Secs. 19, 19A.)

who shall stamp the same, in such manner as the ¹[collecting Government] may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

19. The first holder in British India of any bill of exchange ²[payable otherwise than on demand], ^{3*} or promissory note drawn or made out of British India shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in British India, affix thereto the proper stamp and cancel the same :

Bills and
notes drawn
out of
British India.

Provided that,—

(a) if, at the time any such bill of exchange, ^{3*} or note comes into the hands of any holder thereof in British India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section 12, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled;

(b) nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

***19A.** Where any instrument has become chargeable in any part of British India other than Bengal with duty under this Act or under any other law for the time being in force in any part of British India and thereafter becomes chargeable with a higher rate of duty in Bengal under clause (bb) of the first proviso to section 3—

Payment
of duty
on certain
instruments
liable to
increased
duty in
Bengal under
clause (bb)
of section 3.

(i) notwithstanding anything contained in the first proviso to section 3, the amount of duty chargeable on such instrument shall be the amount chargeable on it under Schedule IA less the amount of duty, if any, already paid on it in British India,

¹See foot-note 4 on p. 758, *ante*.

²These words were inserted by s. 5 of the Indian Finance Act, 1927 (V of 1927).

³The word "cheque" was omitted, *ibid.*

⁴Section 19A was inserted by s. 8 of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922.)

(Chapter II.—Stamp-duties.—Secs. 20-23.)

- (ii) in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamps necessary for the payment of the amount of duty chargeable on it under clause (i) in the same manner and at the same time and by the same persons as though such instrument were an instrument received in British India for the first time at the time when it became chargeable with the higher duty.

D.—Of Valuations for Duty.

Conversion
of amount
expressed
in foreign
currencies.

20. (1) Where an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any currency other than that of British India, such duty shall be calculated on the value of such money in the currency of British India according to the current rate of exchange on the day of the date of the instrument.

(2) The ¹[Central Government] may, from time to time, by notification in the ²[*Official Gazette*], prescribe a rate of exchange for the conversion of British or any foreign currency into the currency of British India for the purposes of calculating stamp-duty, and such rate shall be deemed to be the current rate for the purposes of sub-section (1).

Stock and
marketable
securities
how to be
valued.

21. Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable or other security, such duty shall be calculated on the value of such stock or security according to the average price or the value thereof on the day of the date of the instrument.

Effect of
statement
of rate of
exchange
or average
price.

22. Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

Instruments
reserving
interest.

23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with

¹These words were substituted for the words "Governor General in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "Gazette of India" *ibid.*

of 1904.]

(Chapter II.—Stamp-duties.—Secs. 23A, 24.)

which it would have been chargeable had no mention of interest been made therein.

23A. (1) Where an instrument (not being a promissory note or bill of exchange)—

Certain instruments connected with mortgages of marketable securities to be chargeable as agreements.

- (a) is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt, or
- (b) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security,

it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under ²[Article No. 5(c)] of Schedule I.

(2) A release or discharge of any such instrument shall only be chargeable with the like duty.

24. Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty:

How transfer in consideration of debt, or subject to future payment, etc., to be charged.

Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in Article No. 18 of Schedule I.

Explanation.—In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage-money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale:

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

¹Section 23A was added by s. 3 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

²These words and figure were substituted for the words and figure "Article No. 5(b)" by s. 3 of the Indian Stamp (Amendment) Act, 1912 (I of 1912).

(Chapter. II.—Stamp-duties.—Secs. 25, 26.)

Illustrations.

(1) A owes B Rs. 1,000. A sells a property to B, the consideration being Rs. 500 and the release of the previous debt of Rs. 1,000. Stamp duty is payable on Rs. 1,500.

(2) A sells a property to B for Rs. 500 which is subject to a mortgage to C for Rs. 1,000 and unpaid interest Rs. 200. Stamp-duty is payable on Rs. 1,700.

(3) A mortgages a house of the value of Rs. 10,000 to B for Rs. 5,000. B afterwards buys the house from A. Stamp-duty is payable on Rs. 10,000 less the amount of stamp-duty already paid for the mortgage.

Valuation in
case of annuity,
etc.

25. Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance, as the case may be, shall, for the purposes of this Act, be deemed to be,—

- (a) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount;
- (b) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years calculated from the date on which the first payment becomes due; and
- (c) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the maximum amount which will or may be payable as aforesaid during the period of twelve years calculated from the date on which the first payment becomes due.

Stamp where
value of sub-
ject-matter is
indeterminate.

26. Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before the commencement of this Act) could not have been, ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient:

[1939.]

(Chapter II.—Stamp-duties.—Secs. 27, 28.)

¹Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty,—

(a) when the lease has been granted by or on behalf of ²[the Crown], at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to ³[the Crown] under the lease, or,

(b) when the lease has been granted by any other person, at twenty thousand rupees a year;

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease:

Provided also that, where proceedings have been taken in respect of an instrument under section 31 or 41, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution.

27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

Facts affecting duty to be set forth in instrument.

28. (1) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, provided that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

Direction as to duty in case of certain conveyances.

(2) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same

¹This proviso was substituted for the first proviso by s. 4 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

²These words were substituted for the words "the Secretary of State in Council" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "the said Secretary of State in Council", *ibid.*

(Chapter II.—Stamp-duties.—Sec. 28.)

was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(3) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the same to any other person and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(4) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration; and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers:

Provided that the duty on such last-mentioned conveyance shall in no case be less than ¹[two rupees].

(5) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller, or, where such duty would exceed five rupees, with a duty of five rupees.

¹These words were substituted for the words "one rupee" by s. 6 of the Indian Stamp (Bengal Amendment) Act, 1935. (Ben. Act XII of 1935).

of 1899.]

*(Chapter 11.—Stamp-duties.—Sec. 29.)**E.—Duty by whom payable.*

29. In the absence of an agreement to the contrary, Duties by the expense of providing the proper stamp shall be **whom payable.** borne,—

(a) in the case of any instrument described in any of the following articles of Schedule I, namely:—

No. 2 (Administration Bond),

¹[No. 6 (Agreement relating to Deposit of Title-deeds, Pawn or Pledge),]

No. 13 (Bill of exchange),

No. 15 (Bond),

No. 16 (Bottomry Bond),

No. 26 (Customs Bond),

No. 27 (Debenture),

No. 32 (Further charge),

No. 34 (Indemnity-bond),

No. 40 (Mortgage deed),

No. 49 (Promissory-note),

No. 55 (Release),

No. 56 (Respondentia Bond),

No. 57 (Security-bond or Mortgage-deed),

No. 58 (Settlement),

No. 62 (a) (Transfer of shares in an incorporated company or other body corporate),

No. 62 (b) (Transfer of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8),

No. 62 (c) (Transfer of any interest secured by a bond, mortgage-deed or policy of insurance),—

by the person drawing, making or executing such instrument:

¹These words and figure were substituted for the words and figure "No. 6 (Agreement to mortgage)" by s. 5 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

[Act IV]

(Chapter II.—Stamp-duties.—Sec. 29A, 30.)

- ¹[(b) in the case of a policy of insurance other than fire-insurance—by the person effecting the insurance;
- (bb) in the case of a policy of fire-insurance—by the person issuing the policy:]
- (c) in the case of a conveyance (including a reconveyance of mortgaged property) by the grantee: in the case of a lease or agreement to lease—by the lessee or intended lessee:
- (d) in the case of a counterpart of a lease—by the lessor:
- (e) in the case of an instrument of exchange—by the parties in equal shares :
- (f) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates: and,
- (g) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the whole property partitioned, or, when the partition is made in execution of an order passed by a Revenue-authority or Civil Court or arbitrator, in such proportion as such authority, Court or arbitrator directs.

Application of sections 23A, 24 and 29 to instrument chargeable with duty under Schedule IA.

29A. In applying sections 23A, 24 or 29 to any instrument chargeable with a higher rate of duty under the Bengal Stamp (Amendment) Act, 1922,³ [or the Indian Stamp (Bengal Amendment) Act, 1935], the references in those sections to the several articles in Schedule I shall be deemed to be references to the corresponding articles in Schedule IA.

Ben. Act III of 1922.
Ben. Act XII of 1935.

Obligation to give receipt in certain cases.

30. Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction or part satisfaction of a debt any moveable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

¹These clauses were substituted for cl. (b) by s. 4 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

²Section 29A was inserted by s. 9 of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

³Words were inserted by s. 5 of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

of 1899.]

(Chapter III.—Adjudication as to Stamps.—Sec. 31.)

¹[Any person receiving or taking credit for any premium or consideration for any renewal of any contract of fire-insurance, shall, within one month after receiving or taking credit for such premium or consideration, give a duly stamped receipt for the same.]

CHAPTER III.

ADJUDICATION AS TO STAMPS.

31. (1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable. Adjudication as to proper stamp.

(2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Provided that—

- (a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an inquiry as to the duty with which the instrument to which it relates is chargeable; and
- (b) every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

¹This paragraph was added by s. 5 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

(Chapter III.—Adjudication as to Stamps.—Sec. 32.)

Certificate by
Collector.

32. (1) When an instrument brought to the Collector under section 31 is, in his opinion, one of a description chargeable with duty, and—

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Provided that nothing in this section shall authorise the Collector to endorse—

(a) any instrument ¹[other than an instrument chargeable with a duty under clause (bb) of the first proviso to section 3] executed or first executed in British India and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;

(b) any instrument executed or first executed out of British India and brought to him after the expiration of three months after it has been first received in British India;²*

¹These words were inserted by s. 10(1) of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

²The word "or" was omitted by s. 10(2), *ibid.*

of 1898.]

(Chapter IV.—Instruments not duly stamped.—Sec. 33.)

- (c) any instrument chargeable with the duty of one anna ¹[or half an anna] or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped; ²[or
- (d) any instrument chargeable with duty under clause (bb) of the first proviso to section 3 and brought to him after the expiration of three months of the date on which it is first received in Bengal.]

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

33. (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

Examination
and impounding
of instruments.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed:

Provided that—

- (a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;
- (b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

Act V of
1898.

¹These words were inserted by s. 3 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

²The word "or" and proviso (d) within square brackets were inserted by s. 10(3) of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

(Chapter IV.—Instruments not duly stamped.—Secs. 34, 35.)

(3) For the purposes of this section, in cases of doubt,—

- (a) ¹[the collecting Government] may determine what offices shall be deemed to be public offices; and
- (b) ²[the collecting Government] may determine who shall be deemed to be persons in charge of public offices.

Special provision as to unstamped receipts.

34. Where any receipt chargeable with a duty of one anna is tendered to or produced before any officer unstamped in the course of the audit of any public account, such officer may in his discretion, instead of impounding the instrument, require a duly stamped receipt to be substituted therefor.

Instruments not duly stamped inadmissible in evidence, etc.

35. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

Provided that—

- (a) any such instrument not being an instrument chargeable with a duty of one anna ³[or half an anna] only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;
- (b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if

¹These words were substituted for the words "the Governor General in Council" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "the Local Government", *ibid.*

³These words were inserted by s. 3 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

of 1898.]

(Chapter IV.—Instruments not duly stamped—Secs. 36—38.)

stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

- (c) where a contract[†] or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;
- (d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;
- (e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of ¹[the Crown], or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

Act V of 1898.

36. Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

Admission of instrument where not to be questioned.

37. ²[The collecting Government] may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution/

Admission of improperly stamped instruments.

38. (1) When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section

Instruments impounded how dealt with.

¹These words were substituted for the words "the Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "The Governor General in Council", *ibid.*

(Chapter IV.—Instruments not stamped—Secs. 39, 40)

37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

Collector's power to refund penalty paid under section 38, sub-section (1).

39. (1) When a copy of an instrument is sent to the Collector under section 38, sub-section (1), he may, if he thinks fit,¹ refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument.

(2) When such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may refund the whole penalty so paid.

Collector's power to stamp instruments impounded.

40. (1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38, sub-section (2), not being an instrument chargeable with a duty of one anna ²[or half an anna] only or a bill of exchange or promissory note, he shall adopt the following procedure:—

(a) if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be:

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit, ³[an amount not exceeding] ten times the amount of the

¹The words "upon application made to him in this behalf or, if no application is made, with the consent of the Chief Controlling Revenue-authority" were omitted by the Decentralization Act, 1914 (IV of 1914).

²These words were inserted by s. 3 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

³These words were inserted by s. 6 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

of 1906.]

(Chapter IV.—Instruments not duly stamped—Secs. 41, 42.)

proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees :

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.

41. If any instrument chargeable with duty and not duly stamped, not being an instrument chargeable with a duty of one anna ¹[or half an anna] only or a bill of exchange or promissory note, is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections 33 and 40, receive such amount and proceed as next hereinafter prescribed.

Instruments unduly stamped by accident.

42. (1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 35, section 40 or section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

Endorsement of instruments on which duty has been paid under sections 35, 40 or 41.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in

¹These words were inserted by s. 3 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

[Act II

(Chapter IV.—Instruments not stamped—Secs. 43, 44.)

this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:

Provided that—

(a) no instrument which has been admitted in evidence upon payment of duty, and a penalty under section 35, shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate;

(b) nothing in this section shall affect the Code of Civil Procedure, section 144, clause 3. Act XIV of 1882.

Prosecution for offence against Stamp-law.

43. The taking of proceedings or the payment of a penalty under this chapter in respect of any instrument shall not bar the prosecution of any person who appears to have committed an offence against the Stamp-law in respect of such instrument:

Provided that no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

Persons paying duty or penalty may recover same in certain

44. (1) When any duty or penalty has been paid under section 35, section 37, section 40 or section 41, by any person in respect of an instrument, and, by agreement or under the provisions of section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.

(2) For the purpose of such recovery any certificate granted in respect of such instrument under this Act shall be conclusive evidence of the matters therein certified.

(3) Such amount may, if the Court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties and in which

¹See now the Code of Civil Procedure, 1908 (V of 1908), Schedule I, order XIII, rule 9.

of 1899.]

(Chapter IV.—Instruments not duly stamped—Secs. 45—47.)

such instrument has been tendered in evidence. If the Court does not include the amount in such order, no further proceedings for the recovery of the amount shall be maintainable.

45. (1) Where any penalty is paid under section 35 or section 40, the Chief Controlling Revenue-authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

Power to Revenue-authority to refund penalty or excess duty in certain cases

(2) Where, in the opinion of the Chief Controlling Revenue-authority, stamp-duty in excess of that which is legally chargeable has been charged and paid under section 35 or section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess.

46. (1) If any instrument sent to the Collector under section 38, sub-section (2), is lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

Non-liability for loss of instruments sent under section 38.

(2) When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same, may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument.

47. When any bill of exchange ¹[or promissory note] chargeable with the duty of one anna is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill, ²[or note], and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill, ²[or note] shall, so far as respects the duty, be deemed good and valid:

Power of payer to stamp bills and promissory notes received by him unstamped.

Provided that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill, ²[or note].

¹These words were substituted for the words "promissory note or cheque" by s. 5 of the Indian Finance Act, 1927 (V of 1927).

²These words were substituted for the words "note or cheque", *ibid.*

(Chapter IV.—Instruments not duly stamped.—
Chapter V.—Allowances for Stamps in certain cases.—Secs. 48-49.)

Recovery of
duties and
penalties.

48. All duties, penalties and other sums required to be paid under this chapter may be recovered by the Collector by distress and sale of the moveable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land-revenue.

Validity of
certificate or
endorsement
in respect of
instruments
for which
higher rate of
duty payable
in Bengal.

48A. Notwithstanding anything contained in this Act, no certificate or endorsement under this Act in respect of an instrument chargeable in Bengal with a higher rate of duty under the Bengal Stamp (Amendment) Act, 1922, ²[or the Indian Stamp (Bengal Amendment) Act, 1935], shall be received in evidence or be in any way valid in respect of the payment of duty on such instrument or in respect of the chargeability of such instrument with duty, unless the duty chargeable under the Bengal Stamp (Amendment) Act, 1922, ²[or the Indian Stamp (Bengal Amendment) Act, 1935], has been paid on such instrument.

Ben.
Act III of
1922.
Ben. Act
XII of
1935.

CHAPTER V.

ALLOWANCES FOR STAMPS IN CERTAIN CASES.

Allowance
for spoiled
stamps.

49. Subject to such rules as may be made by ¹[the collecting Government] as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 50, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely:—

- (a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person:

¹Section 48A was inserted by s. 11 of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

²These words were inserted by s. 5 of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

³These words were substituted for the words "the Local Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1899.]

(Chapter V.—Allowances for Stamps in certain cases.
—Sec. 49.)

- (b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto:
- (c) in the case of bills of exchange ¹[payable otherwise than on demand]^{2*} or promissory notes—
 - (1) the stamp on³[any such bill of exchange]^{2**} signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance; provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange ^{2**}to be afterwards written thereon:
 - (2) the stamp on any promissory note signed by or in behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands:
 - (3) the stamp used or intended to be used for ³[any such bill of exchange] ^{4*}or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange ^{2**}may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee: provided that another completed and duly stamped bill of exchange, ^{4*}or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, ^{4*}or note:
- (d) the stamp used for an instrument executed by any party thereto which—
 - (1) has been afterwards found to be absolutely void in law from the beginning:

¹These words were inserted by s. 5 of the Indian Finance Act, 1927 (V of 1927).

²The words "cheques" and "or cheque" were omitted, *ibid.*

³These words were substituted for the words "any bill of exchange", *ibid.*

⁴The word "cheque" was omitted, *ibid.*

*(Chapter V.—Allowances for Stamps in certain cases.
—Sec. 49.)*

- (2) has been afterwards found unfit by reason of any error or mistake therein, for the purpose originally intended;
- (3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed:
- (4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended:
- (5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose:
- (6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value:
- (7) is deficient in value and the transaction intended to be thereby effected had been effected by some other instrument between the same parties and bearing a stamp of not less value:
- (8) is inadvertently and undesignedly spoiled and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

of 1899.]

*(Chapter V.—Allowances for Stamps in certain cases.
—Secs. 50, 51.)*

Explanation.—The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable has been paid is an impressed stamp within the meaning of this section.

50. The application for relief under section 49 shall be made within the following periods, that is to say,—

Application for relief under section 49 when to be made.

- (1) in the cases mentioned in clause (d) (5), within two months of the date of the instrument:
- (2) in the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled:
- (3) in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or, if it is not dated within six months after the execution thereof by the person by whom it was first or alone executed:

Provided that,—

- (a) when the spoiled instrument has been for sufficient reasons sent out of British India, the application may be made within six months after it has been received back in British India:
- (b) when, from unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.

51. The Chief Controlling Revenue-authority ¹[or the Collector if empowered by the Chief Controlling Revenue-authority in this behalf] may, without limit of time, make allowance for stamped papers used for printed forms of instruments ²[by any banker or] by any incorporated company or other body corporate, if for any sufficient reason such forms have ceased to be required

Allowance in case of printed forms no longer required by Corporations.

¹These words were inserted by the Decentralization Act, 1914 (IV of 1914).

²These words were inserted by s. 6 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

(Chapter V.—Allowances for Stamps in certain cases.
—Secs. 52—54.)

by the said '[banker,] company or body corporate, provided that such authority is satisfied that the duty in respect of such stamped papers has been duly paid.

Allowance
for misused
stamps.

52. (a) When any person has inadvertently used, for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty; or

(b) when any stamp used for an instrument has been inadvertently rendered useless under section 15, owing to such instrument having been written in contravention of the provisions of section 13;

the Collector may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

Allowance for
spoiled or
misused stamps
how to be made.

53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof—

- (a) other stamps of the same description and value; or,
- (b) if required, and he thinks fit, stamps of any other description to the same amount in value; or,
- (c) at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee.

Allowance
for stamps
not required for
use.

54. When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction—

- (a) that such stamp or stamps were purchased by such person with a *bonâ fide* intention to use them; and

¹This word was inserted by the Indian Stamp (Amendment) Act, 1906 (V of 1906).

of 1898.]

*(Chapter V.—Allowances for Stamps in certain cases.**—Chapter VI.—Reference and Revision—Secs.**55, 56.)*

- (b) that he has paid the full price thereof; and
- (c) that they were so purchased within the period of six months next preceding the date on which they were so delivered:

Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.

55. When any duly stamped debenture is renewed by the issue of a new debenture in the same terms, the Collector shall, upon application made within one month, repay to the person issuing such debenture, the value of the stamp on the original or on the new debenture, whichever shall be less:

Allowance on renewal of certain debentures.

Provided that the original debenture is produced before the Collector and cancelled by him in such manner as the ¹[Provincial Government] may direct.

Explanation.—A debenture shall be deemed to be renewed in the same terms within the meaning of this section notwithstanding the following changes:—

- (a) the issue of two or more debentures in place of one original debenture, the total amount secured being the same;
- (b) the issue of one debenture in place of two or more original debentures, the total amount secured being the same;
- (c) the substitution of the name of the holder at the time of renewal for the name of the original holder; and
- (d) the alteration of the rate of interest or the dates of payment thereof.

CHAPTER VI.

REFERENCE AND REVISION.

56. (1) The powers exercisable by a Collector under Chapter IV and Chapter V ²[and under clause (a) of the first proviso to section 26] shall in all cases be

Control of, and statement of case to, Chief Controlling Revenue-authority.

¹These words were substituted for the words "Governor General in Council" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words and figure were inserted by s. 7 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

(Chapter VI.—Reference and Revision.—Sec. 57.)

subject to the control of the Chief Controlling Revenue-authority.

(2) If any Collector, acting under section 31, section 40 or section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision.

57. (1) The Chief Controlling Revenue-authority may state any case referred to it under section 56, subsection (2), or otherwise coming to its notice, and refer such case, with its own opinion thereon,—

- ¹[(a) if the case arises in the Province of Madras or in Coorg, to the High Court at Madras;
- (b) if it arises in the Province of Bombay, to the High Court at Bombay;
- (c) if it arises in Sind, to the Judicial Commissioner's Court;
- (d) if it arises in Agra or in Ajmer-Merwara, to the High Court at Allahabad;
- (e) if it arises in Oudh, to the Chief Court;
- (f) if it arises in Bihar or in Orissa, to the High Court at Patna;
- (g) if it arises in the Punjab, the North-West Frontier Province, British Baluchistan, or Delhi, to the High Court at Lahore;
- (h) if it arises in the Central Provinces and Berar, to the High Court at Nagpur; and
- (i) if it arises in any other part of British India, to the High Court at Calcutta.]

(2) Every such case shall be decided by not less than three Judges of the High Court, ²[Chief Court of Judicial Commissioner's Court] to which it is referred, and in case of difference the opinion of the majority shall prevail.

¹Clauses (a) to (i) were substituted for clauses (a) to (e) by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "or Chief Court" *ibid.*

Statement of
case by Chief
Controlling
Revenue-
authority
to High Court,
etc.

of 1898.]

(Chapter VI.—Reference and Revision.—Secs. 58—61.)

58. If the High Court ¹[Chief Court or Judicial Commissioner's Court] is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue-authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

Power of High Court, etc., to call for further particulars as to case stated.

59. (1) The High Court ¹[Chief Court or Judicial Commissioner's Court], upon the hearing of any such case, shall decide the questions raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded.

Procedure in disposing of case stated.

(2) The Court shall send to the Revenue-authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar; and the Revenue-authority shall, on receiving such copy, dispose of the case conformably to such judgment.

60. (1) If any Court, other than a Court mentioned in section 57, feels doubt as to the amount of duty to be paid in respect of any instrument under proviso (a) to section 35, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court ¹[Chief Court or Judicial Commissioner's Court] to which, if he were the Chief Controlling Revenue-authority, he would, under section 57, refer the same.

Statement of case by other Courts to High Court, etc.

(2) Such Court shall deal with the case as if it had been referred under section 57, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Chief Controlling Revenue-authority and another like copy to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

(3) References made under sub-section (1), when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

61. (1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898, makes any

Revision of certain decisions of Courts regarding sufficiency stamps.

Act V of
1898.

¹See foot-note 2 on p. 784, ante.

(Chapter VI.—Reference and Revision.—Sec. 61.)

order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 35, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.

(2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under sub-section (2), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp-law which the Collector considers him to have committed in respect of such instrument:

Provided that—

(a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty;

(b) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42.

of 1899.]

(Chapter VII.—Criminal Offences and Procedure—
Secs. 62—64.)

CHAPTER VII.

CRIMINAL OFFENCES AND PROCEDURE.

62. (1) Any person—

- (a) drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance of payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange ¹[payable otherwise than on demand]²* or promissory note without the same being duly stamped; or
- (b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped; or
- (c) voting or attempting to vote under any proxy not duly stamped;

Penalty for executing, etc., instrument not duly stamped.

shall for every such offence be punishable with fine which may extend to five hundred rupees:

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees.

63. Any person required by section 12 to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section, shall be punishable with fine which may extend to one hundred rupees.

Penalty for failure to cancel adhesive stamp.

64. Any person who, with intent to defraud the Government,—

- (a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth; or,

Penalty for omission to comply with provisions of section 27.

¹These words were inserted by s. 5 of the Indian Finance Act, 1927 (V of 1927).

²The word "cheque" was omitted, *ibid*.

[Act II]

*(Chapter VII.—Criminal Offences and Procedure.—
Secs. 65—67.)*

- (b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances; or
- (c) does any other act calculated to deprive the Government of any duty or penalty under this Act;

shall be punishable with fine which may extend to five thousand rupees.

Penalty for refusal to give receipt, and for devices to evade duty on receipts.

65. Any person who—

- (a) being required under section 30 to give a receipt, refuses or neglects to give the same; or,
- (b) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered;

shall be punishable with fine which may extend to one hundred rupees.

Penalty for not making out policy, or making one not duly stamped.

66. Any person who—

- (a) receives, or takes credit for, any premium or consideration for any contract of insurance and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance; or
- (b) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay, or allow in account, any money upon, or in respect of, any such policy;

shall be punishable with fine which may extend to two hundred rupees.

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

67. Any person drawing or executing a bill of exchange ¹[payable otherwise than on demand] or a policy of marine insurance purporting to be drawn or executed

¹These words were inserted by s. 5 of the Indian Finance Act, 1927 V of 1927).

of 1899.]

*(Chapter VII.—Criminal Offences and Procedure.—
Secs. 68—70.)*

in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punishable with fine which may extend to one thousand rupees.

68. Any person who—

- (a) with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made; or
- (b) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same; or
- (c) with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force;

Penalty for post-dating bills, and for other devices to defraud the revenue.

shall be punishable with fine which may extend to one thousand rupees.

69. (a) Any person appointed to sell stamps who disobeys any rule made under section 74; and

(b) any person not so appointed who sells or offers for sale any stamp (other than a one-anna ¹[or half an anna] adhesive stamp);

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for breach of rule relating to sale of stamps and for unauthorised sale.

70. (1) No prosecution in respect of any offence punishable under this Act or any Act hereby repealed shall be instituted without the sanction of the Collector or such other officer as ²[the collecting Government] generally, or the Collector specially, authorises in that behalf.

Institution² and conduct of prosecutions.

(2) The Chief Controlling Revenue-authority, or any officer generally or specially authorised by it in this behalf, may stay any such prosecution or compound any such offence.

¹These words were inserted by s. 3 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

²These words were substituted for the words "the Local Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter VII.—Criminal Offences and Procedure.—
Chapter VIII.—Supplemental Provisions.—Secs.
71—74.)

(3) The amount of any such composition shall be recoverable in the manner provided by section 18.

Jurisdiction
of Magistrates.

71. No Magistrate other than a Presidency Magistrate or a Magistrate whose powers are not less than those of a Magistrate of the second class, shall try any offence under this Act.

Place of
trial.

72. Every such offence committed in respect of any instrument may be tried in any district or presidency-town in which such instrument is found as well as in any district or presidency-town in which such offence might be tried under the Code of Criminal Procedure for the time being in force.

CHAPTER VIII.

SUPPLEMENTAL PROVISIONS.

Books, etc.,
to be open
to inspection.

73. Every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorised in writing by the Collector to inspect for such purpose the registers, books, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary, without fee or charge.

Powers to
make rules
relating to
sale of
stamps.

74. The ¹[collecting Government] ²* * * *
may make rules for regulating—

- (a) the supply and sale of stamps and stamped papers,
- (b) the persons by whom alone such sale is to be conducted, and
- (c) the duties and remuneration of such persons:

Provided that such rules shall not restrict the sale of one-anna ³[or half an anna] adhesive stamps.

¹These words were substituted for the words "Local Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words "subject to the control of the Governor General in Council" were omitted, *ibid*.

³These words were inserted by s. 3 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

of 1933.]

(Chapter VIII.—Supplemental Provisions.—

Secs. 75—77.)

75. The ¹[collecting Government] may make rules to carry out generally the purposes of this Act, and may by such rules prescribe the fines, which shall in no case exceed five hundred rupees, to be incurred on breach thereof. Power to make rules generally to carry out Act.

76. ²[(1) All rules made under this Act shall be published in the *Official Gazette*.] Publication of rules.

(2) All rules published as required by this section shall, upon such publication, have effect as if enacted by this Act.

76A. ⁴[The Central Government, subject to the provisions of section 124(1) of the Government of India Act, 1935, and the Provincial Government, may by notification in the *Official Gazette*], delegate— Delegation of certain powers.

26 Geo. V
c. 2.

(a) all or any of the powers conferred on it by sections 2 (9), 33 (3) (b), 70 (1), 74 and 75 to the Chief Controlling Revenue-authority; and

(b) all or any³ of the powers conferred on the Chief Controlling Revenue-authority by sections 45 (1) (2), 56 (1) and 70 (2) to such subordinate Revenue-authority as may be specified in the notification.

77. ⁵[Except for the provisions as to copies contained in section 6A] nothing in this Act contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to court-fees. Saving as to court-fees.

¹These words were substituted for the words "Governor General in Council" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²Sub-section (1) was substituted for the original sub-section, *ibid*.

³Section 76A was inserted by the Decentralization Act, 1914 (IV of 1914).

⁴These words and figures were substituted for the words "The Local Government may, by notification in the local official Gazette" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were inserted by s. 12 of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

(Chapter VIII.—Supplemental Provisions.—

Secs. 78, 79.)

Act to be
translated
and sold
cheaply.

78. Every ¹[Provincial Government] shall make provision for the sale of translations of this Act in the principal vernacular languages of the territories administered by it at a price not exceeding four annas per copy.

79. [Repeal.] *Rep. by the Repealing and Amending Act, 1914 (X of 1914).*

¹These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[of 1889.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.

STAMP-DUTY ON INSTRUMENTS.

(See section 3.)

Description of Instrument.	Proper Stamp-duty.
1. Acknowledgment of a debt exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper when such book or paper is left in the creditor's possession : provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property.	One anna.
2. Administration-Bond , including a bond given under section 256 of the Indian Succession Act, 1865 ¹ , section 6 of the Government Savings Banks Act, 1873, section 78 of the Probate and Administration Act, 1881 ¹ , or section 9 or section 10 of the Succession Certificate Act, 1889 ¹ ,—	X of 1865. V of 1873. V of 1881. VII of 1889.
(a) where the amount does not exceed Rs. 1,000 ..	The same duty as a Bond (No. 15) for such amount.
(b) in any other case	Five rupees.
3. Adoption-Deed , that is to say, any instrument (other than a will) recording an adoption or conferring or purporting to confer an authority to adopt.	Ten rupees.
Advocate. See Entry as an Advocate (No. 30).	
4. Affidavit , including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing.	One rupee.
<i>Exemptions.</i>	
Affidavit or declaration in writing when made—	
¹ [(a) as a condition of enrolment under the Indian Army Act, 1911], ² [or the Indian Air Force Act, 1932.]	VIII of 1911. XIV of 1932.

¹These Acts have been repealed and re-enacted by the Indian Succession Act, 1925 (XXXIX of 1925) except section 13 of the Succession Certificate Act, 1889.

²These words and figure were substituted for the words "(a) as a condition of enlistment under the Indian Articles of War" by the Repealing and Amending Act, 1928 (XVIII of 1928).

³These words and figure were inserted by s. 130 and the Sch. of the Indian Air Force Act, 1932 (XIV of 1932).

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>4. Affidavit—<i>concl'd.</i></p> <p style="text-align: center;"><i>Exemptions—concl'd.</i></p> <p>(b) for the immediate purpose of being filed or used in any Court or before the officer of any Court ; or</p> <p>(c) for the sole purpose of enabling any person to receive any pension or charitable allowance.</p>	
<p>5. Agreement or Memorandum of an Agreement—</p> <p>(a) if relating to the sale of a bill of exchange ..</p> <p>(b) if relating to the sale of a Government security or share in an incorporated company or other body corporate ;</p> <p>(c) if not otherwise provided for</p> <p style="text-align: center;"><i>Exemptions.</i></p>	<p>Two annas.</p> <p>Subject to a maximum of ten rupees, one anna for every Rs. 10,000 or part thereof of the value of the security or share.</p> <p>Eight annas.</p>
<p>Agreement or memorandum of agreement—</p> <p>(a) for or relating to the sale of goods or merchandise exclusively, not being a Note or Memorandum chargeable under No. 43 ;</p> <p>(b) made in the form of tenders to the^a [Central Government] for or relating to any loan ;</p> <p>(c) made under the European Vagrancy Act, 1874, section 17.</p>	
<p>Agreement to Lease. See Lease (No. 35).</p>	
<p>6. Agreement relating to deposit of Title deeds, Pawn or Pledge, that is to say, any instrument evidencing an agreement relating to—</p> <p>(1) the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or</p>	

^aThis article was substituted for the original article by s. 3(i) of the Indian Stamp (Amendment) Act, 1910 (VI of 1910).

^bThese words were substituted for the words " Government of India " by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

^cThis article was substituted for the original article by s. 8(1) of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

of 1899.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>6. Agreement relating to deposit of Title-deeds, Pawn or Pledge—<i>concl'd.</i></p> <p>(2) the pawn or pledge of moveable property,</p> <p>where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt—</p> <p>(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement ;</p> <p>(b) if such loan or debt is repayable not more than three months from the date of such instrument.</p>	<p>The same duty as a Bill of Exchange [No. 13 (b)] for the amount secured.</p> <p>Half the duty payable on a Bill of Exchange [No. 13 (b)] for the amount secured.</p>
<p style="text-align: center;"><i>Exemptions.</i></p> <p>Instrument of pawn or pledge of goods if unattested.</p>	
<p>7. Appointment in execution of a power, whether of trustees or of property, moveable or immoveable, where made by any writing not being a Will.</p>	<p>Fifteen rupees.</p>
<p>8. Appraisement or Valuation made otherwise than under an order of the Court in the course of a suit—</p> <p>(a) where the amount does not exceed Rs. 1,000 ..</p> <p>(b) in any other case</p>	<p>The same duty as a Bond (No. 15) for such amount.</p> <p>Five rupees.</p>
<p style="text-align: center;"><i>Exemptions.</i></p> <p>(a) Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.</p> <p>(b) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.</p>	
<p>9. Apprenticeship—Deed, including every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade or employment, not being Articles of clerkship (No. 11).</p>	<p>Five rupees.</p>

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

	Description of Instrument.	Proper Stamp-duty.
XIX of 1850.	<p>9. Apprenticeship—Deed—<i>concl'd.</i></p> <p><i>Exemption.</i></p> <p>Instruments of apprenticeship executed by a Magistrate under the Apprentices Act, 1850, or by which a person is apprenticed by or at the charge of any public charity.</p>	
VI of 1862.	<p>10. Articles of Association of a Company</p> <p><i>Exemption.</i></p> <p>Articles of any Association not formed for profit and registered under section 28 of the Indian Companies Act, 1882.¹</p> <p><i>See also</i> Memorandum of Association of a Company (No. 39).</p>	Twenty-five rupees.
	<p>11. Articles of Clerkship or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an attorney in any High Court.</p> <p>Assignment. <i>See</i> Conveyance (No. 23), Transfer (No. 62), and Transfer of Lease (No. 63), as the case may be.</p> <p>Attorney. <i>See</i> Entry as an Attorney (No. 30), and Power of Attorney (No. 48).</p> <p>Authority to adopt. <i>See</i> Adoption—Deed (No. 3).</p>	Two hundred and fifty rupees.
	<p>12. Award, that is to say, any decision in writing by an arbitrator, or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit—</p> <p>(a) where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000 ;</p> <p>(b) in any other case</p> <p><i>Exemption.</i></p>	<p>The same duty as a Bond (No. 15) for such amount.</p> <p>Five rupees.</p>
Bom. Act VI of 1873. Bom. Act III of 1874.	<p>Award under the Bombay District Municipal Act, 1873*, section 81, or the Bombay Hereditary Offices Act, 1874, section 18.</p>	

¹See now Act VII of 1913.²See now the Bombay District Municipal Act, 1901 (Bom. Act III of 1901).

of 1927.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—contd.

Description of Instrument.	Proper Stamp-duty.		
13. Bill of Exchange as defined by s. 2 (2) <i>1* * * not being a Bond,</i> <i>bank-note or currency-note—</i> <i>* * * *</i>	<i>* * *</i>		
	If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
	Rs. a. p.	Rs. a. p.	Rs. a. p.
<i>*(b) where payable otherwise than on demand, but not more than one year after date or sight—</i>			
<i>If the amount of the bill or note does not exceed Rs. 200</i>	0 3 0	0 2 0	0 1 0
<i>if it exceeds Rs. 200 and does not exceed Rs. 400 ;</i>	0 6 0	0 3 0	0 2 0
<i>if it exceeds Rs. 400 and does not exceed Rs. 600 ; </i>	0 9 0	0 5 0	0 3 0
<i>if it exceeds Rs. 600 and does not exceed Rs. 800 ; </i>	0 12 0	0 6 0	0 4 0
<i>if it exceeds Rs. 800 and does not exceed Rs. 1,000 ; </i>	0 15 0	0 8 0	0 5 0
<i>if it exceeds Rs. 1,000 and does not exceed Rs. 1,200 ; </i>	1 2 0	0 9 0	0 6 0
<i>if it exceeds Rs. 1,200 and does not exceed Rs. 1,600 ; </i>	1 8 0	0 12 0	0 8 0
<i>if it exceeds Rs. 1,600 and does not exceed Rs. 2,500 ; </i>	2 4 0	1 2 0	0 12 0
<i>if it exceeds Rs. 2,500 and does not exceed Rs. 5,000 ; </i>	4 8 0	2 4 0	1 8 0
<i>if it exceeds Rs. 5,000 and does not exceed Rs. 7,500 ; </i>	6 12 0	3 6 0	2 4 0

¹The word, figure and brackets "and (3)" were omitted by s. 5 of the Indian Finance Act, 1927 (V of 1927).

²The words, letter and brackets "(a) where payable on demand.....one anna" were omitted, *ibid*.

³This clause was substituted for the original clause by s. 2 of the Indian Stamp (Amendment) Act, 1912 (I of 1912).

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.		
	If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
	Rs. a. p.	Rs. a. p.	Rs. a. p.
13. Bill of Exchange—<i>concl.</i>			
if it exceeds Rs. 7,500 and does not exceed Rs. 10,000 ;	9 0 0	4 8 0	3 0 0
if it exceeds Rs. 10,000 and does not exceed Rs. 15,000 ;	13 8 0	6 12 0	4 8 0
if it exceeds Rs. 15,000 and does not exceed Rs. 20,000 ;	18 0 0	9 0 0	6 0 0
if it exceeds Rs. 20,000 and does not exceed Rs. 25,000 ;	22 8 0	11 4 0	7 8 0
if it exceeds Rs. 25,000 and does not exceed Rs. 30,000 ;	27 0 0	13 8 0	9 0 0
and for every additional Rs. 10,000 or part thereof in excess of Rs. 30,000 ; ..	9 0 0	4 8 0	3 0 0
(c) where payable at more than one year after date or sight.	The same duty as a Bond (No. 15) for the same amount.		
14. Bill of Lading (including a through bill of lading) ..	Four annas.		
<i>N. B.—If a bill of lading is drawn in parts, the proper stamp therefor must be borne by each one of the set.</i>			
<i>Exemptions.</i>			
(a) Bill of lading when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1889, ¹ and are to be delivered at another place within the limits of the same port.			
(b) Bill of lading when executed out of British India and relating to property to be delivered in British India.			

X of 1889.

¹See now the Indian Ports Act, 1908 (XV of 1908).

of 1886.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>15. Bond [as defined by section 2 (5)] not being a DEBENTURE (No. 27) and not being otherwise provided for by this Act, or by the Court-fees Act, 1870,—</p> <p>where the amount or value secured does not exceed Rs. 10.</p> <p>where it exceeds Rs. 10 and does not exceed Rs. 50 ..</p> <p>where it exceeds Rs. 50 and does not exceed Rs. 100 ..</p> <p>where it exceeds Rs. 100 and does not exceed Rs. 200</p> <p>where it exceeds Rs. 200 and does not exceed Rs. 300</p> <p>where it exceeds Rs. 300 and does not exceed Rs. 400</p> <p>where it exceeds Rs. 400 and does not exceed Rs. 500</p> <p>where it exceeds Rs. 500 and does not exceed Rs. 600</p> <p>where it exceeds Rs. 600 and does not exceed Rs. 700</p> <p>where it exceeds Rs. 700 and does not exceed Rs. 800</p> <p>where it exceeds Rs. 800 and does not exceed Rs. 900</p> <p>where it exceeds Rs. 900 and does not exceed Rs. 1,000 ;</p> <p>and for every Rs. 500 or part thereof in excess of Rs. 1,000 ;</p> <p><i>See</i> ADMINISTRATION- BOND (No. 2), BOTTOMRY BOND (No. 16), CUSTOMS BOND (No. 26), INDEMNITY-BOND (No. 34), RESPONDENTIA BOND (No. 56), SECURITY BOND (No. 57).</p>	<p>VII of 1870.</p> <p>Two annas.</p> <p>Four annas.</p> <p>Eight annas.</p> <p>One rupee.</p> <p>One rupee eight annas.</p> <p>Two rupees.</p> <p>Two rupees eight annas.</p> <p>Three rupees.</p> <p>Three rupees eight annas.</p> <p>Four rupees.</p> <p>Four rupees eight annas.</p> <p>Five rupees.</p> <p>Two rupees eight annas.</p>
<p><i>Exemptions.</i></p> <p>Bond, when executed by—</p> <p>(a) headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, section 99, for the due performance of their duties under that Act ;</p> <p>(b) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.</p>	<p>Ben. Act III of 1876.</p>

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
16. Bottomry Bond , that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage.	The same duty as a Bond (No. 15) for the same amount.
17. Cancellation —Instrument of (including any instrument by which any instrument previously executed is cancelled), if attested and not otherwise provided for. <i>See also RELEASE (No. 55), REVOCATION OF SETTLEMENT (No. 58-B), SURRENDER OF LEASE (No. 61), REVOCATION OF TRUST (No. 64-B).</i>	Five rupees.
18. Certificate of Sale (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer— (a) where the purchase-money does not exceed Rs. 10 (b) where the purchase-money exceeds Rs. 10 but does not exceed Rs. 25 ; (c) in any other case 	Two annas. Four annas. The same duty as a conveyance (No. 23) for a consideration equal to the amount of the purchase-money only.
19. Certificate or other Document evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any incorporated company or other body corporate, or to become proprietor of shares, scrip or stock in or of any such company or body. <i>See also LETTER OF ALLOTMENT OF SHARES (No. 36).</i>	[Two annas.]
20. Charter-Party , that is to say, any instrument (except an agreement for the hire of a tug-steamers) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer, whether it includes a penalty clause or not. * * * * *	One rupee.

¹These words were substituted for the words "one anna" by s. 2 of the Indian Stamp (Amendment) Act, 1923 (XLIII of 1923).

²Article 21 was omitted by s. 5 of the Indian Finance Act, 1927 (V of 1927).

of 1909.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
22. Composition-deed , that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business under the supervision of inspectors or under letters of license, for the benefit of his creditors.	Ten rupees.
23. Conveyance [as defined by section 2 (10)] not being a TRANSFER charged or exempted under No. 62,—	
where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs. 50 ;	Eight annas.
where it exceeds Rs. 50 but does not exceed Rs. 100 ..	One rupee.
where it exceeds Rs. 100 but does not exceed Rs. 200	Two rupees.
where it exceeds Rs. 200 but does not exceed Rs. 300	Three rupees.
where it exceeds Rs. 300 but does not exceed Rs. 400	Four rupees.
where it exceeds Rs. 400 but does not exceed Rs. 500	Five rupees.
where it exceeds Rs. 500 but does not exceed Rs. 600	Six rupees.
where it exceeds Rs. 600 but does not exceed Rs. 700	Seven rupees.
where it exceeds Rs. 700 but does not exceed Rs. 800	Eight rupees.
where it exceeds Rs. 800 but does not exceed Rs. 900	Nine rupees.
where it exceeds Rs. 900 but does not exceed Rs. 1,000	Ten rupees.
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	Five rupees.
<i>Exemption.</i>	
Assignment of copyright by entry made under the Indian Copyright Act, 1847 ¹ , section 5.	XX of 1847.
Co-Partnership-Deed. See PARTNERSHIP (No. 46).	
24. Copy or Extract certified to be a true copy or extract by or by order of any public officer and not chargeable under the law for the time being in force relating to court-fees—	
(i) if the original was not chargeable with duty or if the duty with which it was chargeable does not exceed one rupee ;	Eight annas.
(ii) in any other case	One rupee.

¹See now Act III of 1914.

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>24. Copy or Extract—<i>concl'd.</i></p> <p style="text-align: center;"><i>Exemptions.</i></p> <p>(a) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.</p> <p>¹[(b) Copy of, or extract from, any register relating to births, baptisms, namings, dedications, marriages, ²divorces, deaths or burials].</p>	
<p>25. Counterpart or Duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid,—</p> <p>(a) if the duty with which the original instrument is chargeable does not exceed one rupee ;</p> <p>(b) in any other case</p> <p style="text-align: center;"><i>Exemption.</i></p> <p>Counterpart of any lease granted to a cultivator when such lease is exempted from duty.</p>	<p>The same duty as is payable on the original.</p> <p>One rupee.</p>
<p>26. Customs Bond—</p> <p>(a) where the amount does not exceed Rs. 1,000 ..</p> <p>(b) in any other case</p>	<p>The same duty as a Bond (No. 15) for such amount.</p> <p>Five rupees.</p>
<p>*27. Debenture (whether a mortgage debenture or not), being a marketable security transferable—</p> <p>(a) by endorsement or by a separate instrument of transfer ;</p> <p>(b) by delivery</p> <p><i>Explanation.</i>—The term “Debenture” includes any interest coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty.</p>	<p>The same duty as a Bond (No. 15) for the same amount.</p> <p>The same duty as a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.</p>

¹This clause was substituted for clauses (b) and (c) by s. 7(I) of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

²The word “divorces” was inserted by the Repealing and Amending Act, 1914 (X of 1914).

*Article 27 was substituted for the original article by s. 3 (iii) of the Indian Stamp (Amendment) Act, 1910 (VI of 1910).

of 1900.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>27. Debenture—<i>concl'd.</i></p> <p style="text-align: center;"><i>Exemption.</i></p> <p>A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage-deed, duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debenture-holders : provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed.</p> <p><i>See also</i> BOND (No. 15), and SECTIONS 8 and 55.</p> <p>Declaration of any trust. <i>See</i> TRUST (No. 64).</p>	
<p>28. Delivery-Order in respect of goods, that is to say, any instrument entitling any person therein named, or his assigns or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees.</p> <p>Deposit of Title-Deeds. ¹[<i>See</i> AGREEMENT relating to DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (No. 6.)]</p>	<p>One anna.</p>
<p>Dissolution of Partnership. <i>See</i> PARTNERSHIP (No. 46).</p>	
<p>29. Divorce—Instrument of, that is to say, any instrument by which any person effects the dissolution of his marriage.</p>	<p>One rupee.</p>
<p>Dower—Instrument of. <i>See</i> SETTLEMENT (No. 58).</p>	

¹These words and figure were substituted for the words and figure "*See Agreement by way of equitable mortgage* (No. 6) " by s. 8 (2) of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
Duplicate. — <i>See</i> COUNTERPART (No. 25).	
30. Entry as an Advocate, Vakil or Attorney on the roll of any High Court ¹ [under the Indian Bar Councils Act, 1926, or] in exercise of powers conferred on such Court by Letters Patent or by the Legal Practitioners Act, 1884—	
(a) in the case of an advocate or vakil	Five hundred rupees.
(b) in the case of an attorney	Two hundred and fifty rupees.
<i>Exemption.</i>	
Entry of an advocate, vakil or attorney on the roll of any High Court when he has previously been-enrolled in a High Court.	
* * * * *	
31. Exchange of Property —Instrument of	The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property of greatest value as set forth in such instrument.
Extract. <i>See</i> COPY (No. 24).	
32. Further Charge —Instrument of, that is to say, any instrument imposing a further charge on mortgaged property—	
(a) when the original mortgage is one of the description referred to in clause (a) of Article No. 40 (that is, with possession) ;	The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the further charge secured by such instrument.

¹These words and figure were inserted by s. 19 and the Sch. of the Indian Bar Councils Act, 1926 (XXXVIII of 1926).

²The words and figure "EQUITABLE MORTGAGE. *See* Agreement by way of EQUITABLE MORTGAGE (No. 6)" which were repealed by s. 8 (3) of the Indian Stamp (Amendment) Act, 1904 (XV of 1904), are omitted.

of 1899.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>32. Further Charge—<i>concl'd.</i></p> <p>(b) when such mortgage is one of the description referred to in clause (b) of Article No. 40 (that is, without possession)—</p> <p>(i) if at the time of execution of the instrument of further charge possession of the property is given or agreed to be given under such instrument ;</p> <p>(ii) if possession is not so given</p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge.</p> <p>The same duty as a Bond (No. 15) for the amount of the further charge secured by such instrument.</p>
<p>33. Gift—Instrument of, not being a SETTLEMENT (No. 58) OR WILL OR TRANSFER (No. 62).</p> <p>Hiring Agreement or agreement for service. <i>See AGREEMENT (No. 5).</i></p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property as set forth in such instrument.</p>
<p>34. Indemnity Bond</p>	<p>The same duty as a Security-bond (No. 57) for the same amount.</p>
<p>Inspectorship-Deed. <i>See COMPOSITION-DEED (No. 22).</i></p>	
<p>Insurance. <i>See POLICY OF INSURANCE (No. 47).</i></p>	
<p>35. Lease, including an under-lease or sub-lease and any agreement to let or sub-let—</p> <p>(a) where by such lease the rent is fixed and no premium is paid or delivered—</p> <p>(i) where the lease purports to be for a term of less than one year ;</p>	<p>The same duty as a Bond (No. 15) for the whole amount payable or deliverable under such lease.</p>

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>35. Lease—<i>contd.</i></p> <p>(ii) where the lease purports to be for a term of not less than one year but not more than three years ;</p> <p>(iii) where the lease purports to be for a term in excess of three years ;</p> <p>(iv) where the lease does not purport to be for any definite term ;</p> <p>(v) where the lease purports to be in perpetuity ;</p> <p>(b) where the lease is granted for a fine or premium or for money advanced and where no rent is reserved;</p>	<p>The same duty as a Bond (No. 15) for the amount or value of the average annual rent reserved.</p> <p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent reserved.</p> <p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.</p> <p>The same duty as a Conveyance (No. 23) for a consideration equal to one-fifth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.</p> <p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.</p>

of 1939.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>35. Lease—<i>concl'd.</i></p> <p>(c) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved.</p> <p style="text-align: center;"><i>Exemptions.</i></p> <p>a) Lease, executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees.</p> <p style="text-align: center;">1* * * * *</p> <p>36. Letter of Allotment of Shares in any company or proposed company, or in respect of any loan to be raised by any company or proposed company.</p> <p><i>See also</i> CERTIFICATE OR OTHER DOCUMENT (No. 19).</p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered :</p> <p>Provided that, in any case when an agreement to lease is stamped with the <i>ad valorem</i> stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.</p> <p>²[Two annas.]</p>

¹Exemption (b) was omitted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "one anna" by s. 2 of the Indian Stamp (Amendment) Act, 1923 (XLIH of 1923).

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
37. Letter of Credit , that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn.	¹ [Two annas.]
Letter of Guarantee. See AGREEMENT (No. 5).	
38. Letter of License , that is to say, any agreement between a debtor and his creditors, that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion.	Ten rupees.
39. Memorandum of Association of a Company—	
(a) if accompanied by articles of association under section 37 of the Indian Companies Act, 1882 ² ;	Fifteen rupees.
(b) if not so accompanied	Forty rupees.
<i>Exemption.</i>	
Memorandum of any association not formed for profit and registered under section 26 of the Indian Companies Act, 1882. ³	
40. Mortgage-Deed , not being ⁴ [an AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (No. 6)], BOTTOMRY BOND (No. 16), MORTGAGE OF A CROP (No. 41), RESPONDENTIA BOND (No. 56), OR SECURITY-BOND (No. 57)—	
(a) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given.	The same duty as a Conveyance (No. 23) for a consideration equal to the amount secured by such deed.
(b) when * * * * * possession is not given or agreed to be given as aforesaid.	The same duty as a Bond (No. 15) for the amount secured by such deed.
<i>Explanation.</i> —A mortgagor who gives to the mortgagee a power-of-attorney to collect rents or a lease of the property mortgaged or part thereof is deemed to give possession within the meaning of this article.	

¹These words were substituted for the words "one anna" by s. 2 of the Indian Stamp (Amendment) Act, 1923 (XLIH of 1923).

²See now Act VII of 1913.

³These words and figure were substituted for the words and figure "AN AGREEMENT TO MORTGAGE (No. 6)" by s. 8 (4) (a) of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

⁴The words "at the time of execution" which were repealed by s. 8(4)(b), *ibid.*, are omitted.

of 1906.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>40. Mortgage-Deed—<i>concl'd.</i></p> <p>(c) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped :—</p> <p>for every sum secured not exceeding Rs. 1,000 ..</p> <p>and for every Rs. 1,000 or part thereof secured in excess of Rs. 1,000.</p> <p style="text-align: center;"><i>Exemptions.</i></p> <p>(1) Instrument executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or by their sureties as security for the repayment of such advances.</p> <p>(2) Letter of hypothecation accompanying a bill of exchange.</p> <p>1* * * * *</p>	<p>Eight annas.</p> <p>Eight annas.</p> <p>XIX of 1883.</p> <p>XII of 1884.</p>
<p>41. Mortgage of a Crop, including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether the crop is or is not in existence at the time of the mortgage—</p> <p>(a) when the loan is repayable not more than three months from the date of the instrument—</p> <p>for every sum secured not exceeding Rs. 200 ;</p> <p>and for every Rs. 200 or part thereof secured in excess of Rs. 200 ;</p> <p>(b) when the loan is repayable more than three months, but not more than ²[eighteen months], from the date of the instrument—</p> <p>for every sum secured not exceeding Rs. 100 ; ..</p> <p>and for every Rs. 100 or part thereof secured in excess of Rs. 100.</p>	<p>One anna.</p> <p>One anna.</p> <p>³[Two annas.]</p> <p>³[Two annas.]</p>

¹The exemption “ (3) Instrument of pledge or pawn of goods if unattested ” which was repealed by s. 8(4)(c) of the Indian Stamp (Amendment) Act, 1904 (XV of 1904), is omitted.

²These words were substituted for the words “ one year ” by s. 7(2) of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

³These words were substituted for the words “ Four annas ” by s. 8(5) of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>42. Notarial Act, that is to say, any instrument, endorsement, note, attestation, certificate or entry not being a Protest (No. 50) made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public.</p> <p><i>See also</i> PROTEST OF BILL OR NOTE (No. 50)</p>	One rupee.
<p>43. Note or Memorandum sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal—</p> <p>(a) of any goods exceeding in value twenty rupees ;</p> <p>(b) of any stock or marketable security exceeding in value twenty rupees.</p>	<p>Two annas.</p> <p>Subject to a maximum of ten rupees, one anna far every Rs. 10,000 or part thereof of the value of the stock or security.</p>
<p>44. Note of Protest by the Master of a Ship</p> <p><i>See also</i> PROTEST BY THE MASTER OF A SHIP (No. 51).</p> <p>Order for the Payment of Money. <i>See</i> BILL OF EXCHANGE 13).</p>	Eight annas.

¹Article 43 was substituted for the original article by s. 3(iv) of the Indian Stamp (Amendment) Act, 1910 (VI of 1910).

of 1904.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
45. Partition —Instrument of [as defined by section 2(15)].	The same duty as a Bond (No. 15) for the amount of the value of the separated share or shares of the property.
<p><i>N.B.</i>—The largest share remaining after the property is partitioned (or if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated :</p> <p>Provided always that—</p> <p>(a) when an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than eight annas :</p> <p>(b) where land is held on Revenue Settlement for a period not exceeding thirty years and paying the full assessment, the value for the purpose of duty shall be calculated at not more than five times the annual revenue :</p> <p>(c) where a final order for effecting a partition passed by any Revenue-authority or any Civil Court, or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed eight annas.</p>	
46. Partnership — A.—Instrument of— <p>(a) where the capital of the partnership does not exceed Rs. 500 :</p> <p>(b) in any other case </p> B.—Dissolution of 	<p>Two rupees eight annas.</p> <p>Ten rupees.</p> <p>Five rupees.</p>
¹ [Pawn or Pledge. See AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (No. 6).]	

¹This entry was inserted by s. 8 (6) of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

*These words were substituted for the word "Fire-Insurance" by s. 2 (ii) of the Indian Stamp (Amendment) Act, 1923 (XI.III of 1923).

of 1929.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—contd.

Description of Instrument.	Proper Stamp-duty.										
17. Policy of Insurance—contd.											
C.—ACCIDENT AND SICKNESS-INSURANCE—											
(a) against railway accident, valid for a single journey only.	One anna.										
<i>Exemption.</i>											
When issued to a passenger travelling by the intermediate or the third class in any railway.											
(b) in any other case—for the maximum amount which may become payable in the case of any single accident or sickness where such amount does not exceed Rs. 1,000, and also where such amount exceed Rs. 1,000, for every Rs. 1,000 or part thereof.	Two annas. ¹ [Provided that, in case of a policy of insurance against death by accident when the annual premium payable does not exceed Rs. 2-8 per Rs. 1,000, the duty on such instrument shall be one anna for every Rs. 1,000 or part thereof of the maximum amount which may become payable under it.]										
² [CC.—Insurance by way of indemnity against liability to pay damages on account of accidents to workmen employed by or under the insurer or against liability to pay compensation under the Workmen's Compensation Act, 1923, for every Rs. 100 or part thereof payable as premium.	One anna.]										
³ [D.—LIFE INSURANCE OR OTHER INSURANCE not specifically provided for, except such a Re-Insurance as is described in Division E of this Article—	<table> <tr> <th data-bbox="673 1103 813 1202">If drawn singly.</th><th data-bbox="813 1103 925 1202">If drawn in duplicate, for each part.</th></tr> <tr> <td data-bbox="219 1287 667 1304">(i) for every sum insured not exceeding Rs. 250;</td><td data-bbox="673 1287 925 1304">Two annas</td></tr> <tr> <td data-bbox="219 1304 667 1352">(ii) for every sum insured exceeding Rs. 250 but not exceeding Rs. 500 ;</td><td data-bbox="673 1304 925 1352">Four annas.</td></tr> <tr> <td data-bbox="219 1352 667 1441">(iii) for every sum insured exceeding Rs. 500 but not exceeding Rs. 1,000 and also for every Rs. 1,000 or part thereof in excess of Rs. 1,000.</td><td data-bbox="673 1352 925 1441">Six annas</td></tr> <tr> <td></td><td data-bbox="813 1287 925 1441">One anna. Two annas Three annas.</td></tr> </table>	If drawn singly.	If drawn in duplicate, for each part.	(i) for every sum insured not exceeding Rs. 250;	Two annas	(ii) for every sum insured exceeding Rs. 250 but not exceeding Rs. 500 ;	Four annas.	(iii) for every sum insured exceeding Rs. 500 but not exceeding Rs. 1,000 and also for every Rs. 1,000 or part thereof in excess of Rs. 1,000.	Six annas		One anna. Two annas Three annas.
If drawn singly.	If drawn in duplicate, for each part.										
(i) for every sum insured not exceeding Rs. 250;	Two annas										
(ii) for every sum insured exceeding Rs. 250 but not exceeding Rs. 500 ;	Four annas.										
(iii) for every sum insured exceeding Rs. 500 but not exceeding Rs. 1,000 and also for every Rs. 1,000 or part thereof in excess of Rs. 1,000.	Six annas										
	One anna. Two annas Three annas.										

VIII of
1923.¹This proviso was inserted by the Repealing and Amending Act, 1928 (XVIII of 1928).²This division was inserted by s. 2 of the Indian Stamp (Amendment) Act, 1925 (XV of 1925).³This division was substituted for the original division D by the Repealing and Amending Act, 1928 (XVIII of 1928).

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>47. Policy of Insurance—<i>conold.</i></p> <p>D.—LIFE INSURANCE OR OTHER INSURANCE, etc.—<i>conold.</i></p> <p style="text-align: center;"><i>Exemption.</i></p> <p>Policies of life-insurance granted by the Director-General of Post Offices in accordance with rules for Postal Life-Insurance issued under the authority of the 'Central Government.]</p> <p>E.—RE-INSURANCE BY AN INSURANCE COMPANY, which has granted a POLICY '[of the nature specified in division A or division B of this Article] with another company by way of indemnity or guarantee against the payment on the original insurance of a certain part of the sum insured thereby.</p> <p style="text-align: center;"><i>General Exemption.</i></p> <p>Letter of cover or engagement to issue a policy of insurance :</p> <p>Provided that, unless such letter or engagement bears the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose, except to compel the delivery of the policy therein mentioned.</p>	<p>One-quarter of the duty payable in respect of the original insurance but not less than one anna or more than one rupee.</p>
<p>48. Power-of-Attorney [as defined by section 2 (21)], not being a PROXY (No. 52),—</p> <p>(a) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents ;</p> <p>(b) when required in suits or proceedings under the Presidency Small Cause Courts Act, 1882 ;</p> <p>(c) when authorizing one person or more to act in a single transaction other than the case mentioned in clause (a) ;</p>	<p>Eight annas.</p> <p>Eight annas.</p> <p>One rupee.</p>

XV of
1882.

¹The words "Central Government" were substituted for the words "Governor General in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "of Sea-Insurance or a policy of fire-insurance" by s. 2 of the Indian Stamp (Amendment) Act, 1923 (XLIII of 1923).

of 1908.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
48. Power-of-Attorney—<i>concl.</i>	
(d) when authorizing not more than five persons to act jointly and severally in more than one transaction or generally ;	Five rupees.
(e) when authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally ;	Ten rupees.
(f) when given for consideration and authorizing the attorney to sell any immovable property ;	The same duty as a Conveyance (No. 23) for the amount of the consideration.
(g) in any other case	One rupee for each person authorised.
<i>Explanation.</i> —For the purposes of this Article more persons than one when belonging to the same firm shall be deemed to be one person.	N. B.—The term “registration” includes every operation incidental to registration under the Indian Registration Act, 1877. ¹
49. Promissory Note [as defined by section 2(22)]—	III of 1877.
(a) when payable on demand—	
(i) when the amount or value does not exceed Rs. 250 ;	One anna.
(ii) when the amount or value exceeds Rs. 250 but does not exceed Rs. 1,000 ;	Two annas.
(iii) in any other case	Four annas.
(b) when payable otherwise than on demand ..	The same duty as a Bill of Exchange (No. 13) for the same amount payable otherwise than on demand.
50. Protest of Bill or Note , that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note.	One rupee.

¹See now the Indian Registration Act, 1908 (XVI of 1908).²This article was substituted for the original article by s. 2 of the Indian Stamp (Amendment) Act, 1923 (XLIII of 1923).

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—contd.

Description of Instrument.	Proper Stamp-duty.
<p>51. Protest by the Master of a Ship, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such.</p> <p><i>See also NOTE OF PROTEST BY THE MASTER OF A SHIP (No. 44).</i></p>	One rupee.
<p>52. Proxy empowering any person to vote at any one election of the members of a district or local board or of a body of municipal commissioners, or at any one meeting of (a) members of an incorporated company or other body corporate whose stock or funds is or are divided into shares and transferable, (b) a local authority, or (c) proprietors, members or contributors to the funds of any institution.</p>	¹ [Two annas.]
<p>53. Receipt [as defined by section 2(23)] for any money or other property the amount or value of which exceeds twenty rupees.</p>	One anna.
<p style="text-align: center;"><i>Exemptions.</i></p> <p>Receipt—</p> <p>(a) endorsed on or contained in any instrument duly stamped, ²[or any instrument exempted] under the proviso to section 3 (instruments executed on behalf of the ³[Crown]) ⁴[or any cheque or bill of exchange payable on demand] acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest or annuity, or other periodical payment thereby secured;</p> <p>(b) for any payment of money without consideration;</p> <p>(c) for any payment of rent by a cultivator on account of land assessed to Government revenue or (in the Presidencies of Fort St. George and Bombay) of Inam lands;</p>	

¹These words were substituted for the words "one anna" by s. 2 of the Indian Stamp (Amendment) Act, 1923 (XLIII of 1923).

²These words were substituted for the words "or exempted" by the Repealing and Amending Act, 1928 (XVIII of 1928).

³This word was substituted for the word "Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were inserted by the Repealing and Amending Act, 1928 (XVIII of 1928).

of 1909.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>53. Receipt—<i>concl'd.</i></p> <p><i>Exemptions—concl'd.</i></p> <p>(d) for pay or allowances by non-commissioned ¹[or petty] officers, ²[soldiers, ³sailors or airmen] of ⁴[His Majesty's military, ⁵naval or air forces] when serving in such capacity, or by mounted police-constables ;</p> <p>(e) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned ¹[or petty] officer, ⁴[soldier, ⁵sailor or airman] of ⁶[any of the said forces] and serving in such capacity ;</p> <p>(f) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned ¹[or petty] officers, ²[soldiers, ³sailors or airmen] and not serving the ⁴[Crown] in any other capacity ;</p> <p>(g) given by a headman or lambardar for land-revenue or taxes collected by him ;</p> <p>(h) given for money or securities for money deposited in the hands of any banker to be accounted for :</p> <p>Provided that the same is not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for :</p> <p>Provided also that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for, or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of, or in, any incorporated company or other body corporate or such proposed or intended company or body or in respect of a debenture being a marketable security.</p> <p>¹[See also POLICY OF INSURANCE { No. 47-B(2). }]</p>	

¹The words "or petty," "sailors," "sailor" and "naval" were inserted by the Amending Act, 1934 (XXXV of 1934).

²The words "soldiers or airmen" were substituted for the words "or soldiers" by the Repealing and Amending Act, 1927 (X of 1927).

³The words "His Majesty's military or air forces" were substituted for the words "Her Majesty's Army or Her Majesty's Indian Army," *ibid.*

⁴The words "soldier or airman" were substituted for the words "or soldier", *ibid.*

⁵These words were substituted for the words "either of the said Armies", *ibid.*

⁶See foot-note 3 on p. 816, *ante*.

⁷This note was added by s. 7(4) of the Indian Stamp (Amendment), 1906 (V of 1906).

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
54. Reconveyance of Mortgaged Property— (a) if the consideration for which the property was mortgaged does not exceed Rs. 1,000 ; (b) in any other case 	The same duty as a Conveyance (No. 23) for the amount of such consideration as set forth in the Reconveyance. Ten rupees.
55. Release , that is to say, any instrument ¹ [(not being such a release as is provided for by section 23A)] whereby a person renounces a claim upon another person or against any specified property— (a) if the amount or value of the claim does not exceed Rs. 1,000 ; (b) in any other case 	The same duty as a Bond (No. 15) for such amount or value as set forth in the Release. Five rupees.
56. Respondentia Bond , that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination.	The same duty as a Bond (No. 15) for the amount of the loan secured.
Revocation of any Trust or Settlement. See SETTLEMENT (No. 58) ; TRUST (No. 64).	
57. Security-Bond or Mortgage-Deed executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract,— (a) when the amount secured does not exceed Rs. 1,000 ; (b) in any other case 	The same duty as a Bond (No. 15) for the amount secured. Five rupees.
<p style="text-align: center;"><i>Exemptions.</i></p> <p>Bond or other instrument, when executed—</p> (a) by headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, section 99, for the due performance of their duties under that Act ;	

Ben. Act
III of 1876.

¹These words, figure and letter were inserted by s. 8(7) of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

of 1899.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>57. Security-Bond or Mortgage-Deed—<i>concl'd.</i></p> <p><i>Exemptions—concl'd.</i></p> <p>(b) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem ;</p> <p>(c) under No. 3A of the rules made by the '[Provincial Government] under section 70 of the Bombay Irrigation Act, 1879 ;</p> <p>(d) executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or by their sureties, as security for the repayment of such advances ;</p> <p>(e) executed by officers of '[the Crown] or their sureties to secure the due execution of an office or the due accounting for money or other property received by virtue thereof.</p>	<p>Bom. Act VII of 1879.</p> <p>XIX of 1883. XII of 1884.</p>
<p>58. Settlement—</p> <p>A.—INSTRUMENT OF (including a deed of dower) ..</p>	<p>The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property settled as set forth in such settlement :</p> <p>Provided that, where an agreement to settle is stamped with the stamp required for an instrument of settlement, and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed eight annas.</p>

¹These words were substituted for the words "Governor of Bombay in Council" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the word "Government", *ibid.*

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>58. Settlement—<i>concl'd.</i></p> <p style="text-align: center;"><i>Exemptions.</i></p> <p>(a) Deed of dower executed on the occasion of a marriage between Muhammadans.</p> <p style="text-align: center;">1* * * * *</p> <p>B.—REVOCATION OF— </p> <p style="text-align: center;"><i>See also TRUST (No. 64).</i></p>	<p>The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the Instrument of Revocation but not exceeding ten rupees.</p>
<p>VI of 1882, 59. Share Warrants to bearer issued under the ¹Indian Companies Act, 1882.</p> <p style="text-align: center;"><i>Exemptions.</i></p> <p>Share warrant when issued by a company in pursuance of the ¹Indian Companies Act, 1882, section 30, to have effect only upon payment, as composition for that duty, to the Collector of Stamp-revenue, of—</p> <p>(a) ⁴[one and a half] <i>per centum</i> of the whole subscribed capital of the company, or</p> <p>(b) if any company which has paid the said duty or composition in full subsequently issues an addition to its subscribed capital—⁴[one and a half] <i>per centum</i> of the additional capital so issued.</p>	<p>²[One and a half times] the duty payable on a Conveyance (No. 23) for a consideration equal to the nominal amount of the shares specified in the warrant.</p>

¹Exemption (b) was omitted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See now the Indian Companies Act, 1913 (VII of 1913).

³These words were substituted for the words " three-quarters of " by s. 3(v) of the Indian Stamp (Amendment) Act, 1910 (VI of 1910).

⁴These words were substituted for the word " three-quarters ", *ibid.*

of 1900.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—contd.

Description of Instrument.	Proper Stamp-duty.
8crip. See Certificate (No. 19).	
60. Shipping Order for or relating to the conveyance of goods on board of any vessel.	One anna.
61. Surrender of Lease—	
(a) when the duty with which the lease is chargeable does not exceed five rupees ;	The duty with which such lease is chargeable.
(b) in any other case	Five rupees.
<i>Exemptions.</i>	
Surrender of lease, when such lease is exempted from duty.	
62. Transfer (whether with or without consideration)—	
(a) of shares in an incorporated company or other body corporate ;	¹ [One-half] of the duty payable on a Conveyance (No. 23) for a consideration equal to the value of the share.
(b) of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8 ;	¹ [One-half] of the duty payable on a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.
(c) of any interest secured by a bond, mortgage-deed or policy of insurance—	
(i) if the duty on such bond, mortgage-deed or policy does not exceed five rupees ;	The duty with which such bond, mortgage-deed or policy of insurance is chargeable.
(ii) in any other case	Five rupees.
(d) of any property under the Administrator-General's Act, 1874 ² , section 31 ;	Ten rupees.
(e) of any trust-property without consideration from one trustee to another trustee or from a trustee to a beneficiary.	Five rupees or such smaller amount as may be chargeable under clauses (a) to (c) of this Article.
<i>Exemptions.</i>	
Transfers by endorsement—	
(a) of a bill of exchange, cheque or promissory note ;	

II of 1874.

¹This word was substituted for the word "one-quarter" by s. 3(vi) of the Indian Stamp (Amendment) Act, 1910 (VI of 1910).²See now the Administrator General's Act, 1913 (III of 1913).

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—concl'd.

Description of Instrument.	Proper Stamp-duty.
<p>62. Transfer—concl'd.</p> <p><i>Exemptions—concl'd.</i></p> <p>(b) of a bill of lading, delivery order, warrant for goods, or other mercantile document of title to goods ;</p> <p>(c) of a policy of insurance ;</p> <p>(d) of securities of the ¹[Central Government].</p> <p><i>See also section 8.</i></p> <p>63. Transfer of Lease by way of assignment and not by way of under-lease.</p> <p><i>Exemption.</i></p> <p>Transfer of any lease exempt from duty.</p>	
<p>64. Trust—</p> <p>A.—Declaration of—of, or concerning, any property when made by any writing not being a Will.</p> <p>B.—Revocation of—of, or concerning, any property when made by any instrument other than a Will.</p> <p><i>See also Settlement (No. 58).</i></p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the consideration for the transfer.</p> <p>The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument but not exceeding fifteen rupees.</p> <p>The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument but not exceeding ten rupees.</p>
<p>Valuation. <i>See Appraisement (No. 8).</i></p> <p>Vakil. <i>See Entry as a Vakil (No. 30).</i></p>	
<p>65. Warrant for Goods, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be.</p>	<p>Four annas.</p>

¹These words were substituted for the words "Government of India" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1899.]

SCHEDULE IA.

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 ¹[or the *Indian Stamp (Bengal Amendment) Act, 1935.*]

(See section 3, first proviso.)

[*Note.—The articles in Schedule IA are numbered so as to correspond with similar articles in Schedule I.*]

Description of Instrument.	Proper Stamp-duty.
* * * * *	* *
2. Administration-Bond , including a bond given ² [under section 6 of the Government Savings Banks Act, 1873, or section 291 or section 375 or section 376 of the Indian Succession Act, 1925]—	<div style="text-align: right;">V of 1873. XXXIX of 1925.</div>
(a) where the amount does not exceed Rs. 1,000 ; ..	The same duty as a Bond (No. 15) for such amount.
(b) in any other case	Ten rupees.
3. Adoption-Deed , that is to say, any instrument (other than a will), recording an adoption, or conferring or purporting to confer an authority to adopt.	Twenty rupees.
Advocate. See Entry as an Advocate (No. 30).	
4. Affidavit , including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing.	Two rupees.
<i>Exemptions.</i>	
Affidavit or declaration in writing when made—	
(a) as a condition of enlistment under the Indian Army Act, 1911 ;	<div style="text-align: right;">VIII of 1911.</div>
(b) for the immediate purpose of being filed or used in any Court or before the officer of any Court ; or	

¹Schedule IA was inserted by s. 13 of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

²These words and figure were inserted by s. 5 of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

³These words and figures were substituted for the words and figures " under section 256 of the Indian Succession Act, 1865, section 6 of the Government Savings Banks Act, 1873, section 78 of the Probate and Administration Act, 1881, or section 9 or section 10 of the Succession Certificate Act, 1889 " by s. 7(I), *ibid*.

SCHEDULE IA—*concl.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.	Proper Stamp-duty.
<p>4. Affidavit—<i>concl.</i></p> <p style="text-align: center;"><i>Exemptions—concl.</i></p> <p>(c) for the sole purpose of enabling any person to receive any pension or charitable allowance.</p> <p>5. Agreement or Memorandum of an Agreement—</p> <p>(a) if relating to the sale of a bill of exchange; ..</p> <p>²(b)—</p> <p style="padding-left: 2em;">(i) if relating to the sale of a Government security;</p> <p style="padding-left: 2em;">(ii) if relating to the sale of a share in an incorporated company or other body corporate;</p> <p>(c) if not otherwise provided for</p> <p style="text-align: center;"><i>Exemptions.</i></p> <p>Agreement or memorandum of agreement—</p> <p>(a) for or relating to the sale of goods or merchandise exclusively, not being a Note or Memorandum chargeable under No. 43 ;</p> <p>(b) made in the form of tenders to the ⁴[Central Government] for, or relating to any loan ;</p> <p>(c) made under the European Vagrancy Act, 1874, section 17.</p>	<p>¹[Four annas].</p> <p>Subject to a maximum of twenty rupees, two annas for every Rs. 10,000 or part thereof, of the value of the security.</p> <p>Two annas for every Rs. 5,000 or part thereof, of the value of the share.]</p> <p>³[One rupee.]</p>
<p>IX of 1874.</p> <p>Agreement to Lease. See Lease (No. 35).</p>	

¹These words were substituted for the words "Three annas" by s. 7(2) (a) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

²Clause (b) was substituted for the original clause (b) by s. 7(2)(b), *ibid.*

³These words were substituted for the words "Twelve annas" by s. 7(2)(c), *ibid.*

⁴These words were substituted for the words "Government of India" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1935.]

SCHEDULE IA—*contd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.				Proper Stamp-duty.		
6. Agreement relating to deposit of Title-deeds, Pawn or Pledge, that is to say, any instrument evidencing an agreement relating to—						
(1) the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or						
(2) the pawn or pledge of moveable property, where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt—						
(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement—						
				If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
				Rs. a. p.	Rs. a. p.	Rs. a. p.
(i) when the amount of the loan or debt does not exceed			Rs. 200	0 4 6	0 3 0	0 1 6
(ii) when it exceeds Rs. 200 but does not exceed			400	0 9 0	0 4 6	0 3 0
Ditto	400 ditto		600	0 13 6	0 7 6	0 4 6
Ditto	600 ditto		800	1 2 0	0 9 0	0 6 0
Ditto	800 ditto		1,000	1 6 6	0 12 0	0 7 6
Ditto	1,000 ditto		1,200	1 11 0	0 13 6	0 9 0
Ditto	1,200 ditto		1,600	2 4 0	1 2 0	0 12 0
Ditto	1,600 ditto		2,500	3 6 0	1 11 0	1 2 0
Ditto	2,500 ditto		5,000	6 12 0	3 6 0	2 4 0
Ditto	5,000 ditto		7,500	10 0 0	5 1 0	3 6 0
Ditto	7,500 ditto		10,000	13 8 0	6 12 0	4 8 0
Ditto	10,000 ditto		15,000	20 4 0	10 2 0	6 12 0
Ditto	15,000 ditto		20,000	27 0 0	13 8 0	9 0 0
Ditto	20,000 ditto		25,000	33 12 0	16 14 0	11 4 0
Ditto	25,000 ditto		30,000	40 8 0	20 4 0	13 8 0
and for every additional Rs. 10,000 or part thereof in excess of Rs. 30,000.				13 8 0	6 12 0	4 8 0
(b) if such loan or debt is repayable not more than three months from the date of such instrument.				Half the duty payable on a loan or debt under clause (a) (i) or clause (a) (ii) for the amount secured.		
*	*	*	*	*	*	*

SCHEDULE IA—*contd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.	Proper Stamp-duty.
<p>7. Appointment in execution of a power, whether of trustees or of property, moveable or immoveable, where made by any writing not being a will.</p>	Twenty-five rupees.
<p>8. Appraisalment or Valuation made otherwise than under an order of the Court in the course of a suit—</p> <p>(a) where the amount does not exceed Rs. 1,000 ..</p> <p>(b) in any other case</p>	<p>The same duty as a Bottomry Bond (No. 16) for such amount.</p> <p>¹[Ten rupees.]</p>
<p style="text-align: center;"><i>Exemptions.</i></p> <p>(a) Appraisalment or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.</p> <p>(b) Appraisalment of crops for the purpose of ascertaining the amount to be given to a landlord as rent.</p> <p>9. Apprenticeship-deed, including every writing relating to the service or tuition of any apprentice, clerk or servant placed with any master to learn any profession, trade or employment, not being Articles of Clerkship (No. 11).</p>	
<p style="text-align: center;"><i>Exemptions.</i></p> <p>Instruments of apprenticeship executed by a Magistrate under the Apprentices Act, 1850, or by which a person is apprenticed by, or at the charge of any public charity.</p>	
<p>*10. Articles of Association of a Company—</p> <p>(a) where the nominal share capital does not exceed one lakh of rupees.</p> <p>(b) where the nominal share capital exceeds one lakh of rupees.</p>	<p>²[Ten rupees.]</p> <p>Fifty rupees.</p> <p>One hundred rupees.</p>

XIX of
1850.

¹These words were substituted for the words "Seven rupees eight annas" by s. 7(3) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

²These words were substituted for the words "Seven rupees eight annas" by s. 7(4) *ibid.*

Article 10 was substituted for the original article 10 by s. 7(5), *ibid.*

of 1899.]

SCHEDULE IA—*contd.*

[*Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.*]

Description of Instrument.	Proper Stamp-duty.
10. Articles of Association of a Company—<i>concl.</i>	
<p style="text-align: center;"><i>Exemptions.</i></p> <p>Articles of any association not formed for profit and registered under section 26 of the Indian Companies Act, 1913.</p> <p><i>See also</i> Memorandum of Association of a Company (No. 39).</p>	<p style="text-align: right;">VII of 1913.</p>
* * * * *	* * *
Assignment. <i>See</i> Conveyance (No. 23), Transfer (No. 62), and Transfer of Lease (No. 63), as the case may be.	
Attorney. <i>See</i> Entry as an Attorney (No. 30), and Power-of-attorney (No. 48).	
Authority to Adopt. <i>See</i> Adoption-Deed (No. 3).	
12. Award , that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit—	
(a) where the amount or value of the property to which the award relates as set forth in such award, does not exceed Rs. 1,000 ;	The same duty as a Bond (No. 15) for such amount.
(b) if it exceeds Rs. 1,000 but does not exceed Rs. 5,000 ; and for every additional Rs. 1,000 or part thereof in excess of Rs. 5,000.	<p>1/10 Ten rupees.]</p> <p>Eight annas subject to a maximum of fifty rupees.</p>
<i>Exemption.</i>	
Award under the Bombay District Municipal Act, 1901, section 160, or the Bombay Hereditary Offices Act, 1874, section 18.	<p style="text-align: right;">Bom. Act III of 1901. Bom. Act III of 1874.</p>
* * * * *	* * *

¹These words were substituted for the words "Seven rupees eight annas" by s. 7(d) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

SCHEDULE IA—*contd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

	Description of Instrument.	Proper Stamp-duty.
	14. Bill of Lading (including a through bill of lading).	Six annas. <i>N.B.</i> —If a bill of lading is drawn in parts, the proper stamp therefor must be borne by each one of the set.
	<i>Exemptions.</i>	
XV of 1908.	(a) Bill of lading when the goods therein described are received at a place within the limits of any port, as defined under the Indian Ports Act, 1908, and are to be delivered at another place within the limits of the same port.	
	(b) Bill of lading when executed out of British India and relating to property to be delivered in British India.	
VII of 1870.	15. Bond [as defined by section 2(5)], not being a <i>debenture</i> (No. 27), and not being otherwise provided for by this Act, or by the Court-fees Act, 1870—	
	Where the amount or value secured does not exceed Rs. 10 ;	Two annas.
	where it exceeds Rs. 10 and does not exceed Rs. 50 ;	Four annas.
	where it exceeds Rs. 50 and does not exceed Rs. 100 ;	Eight annas.
	where it exceeds Rs. 100 and does not exceed Rs. 200 ;	One rupee.
	where it exceeds Rs. 200 and does not exceed Rs. 300 ;	One rupee fourteen annas.
	where it exceeds Rs. 300 and does not exceed Rs. 400 ;	¹ [Three rupees.]
	where it exceeds Rs. 400 and does not exceed Rs. 500 ;	² [Three rupees twelve annas.]

¹These words were substituted for the words "Two rupees eight annas" by s. 7(8)(a) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935),

²These words were substituted for the words "Three rupees two annas" by s. 7(8)(b), *ibid.*

of 1899.]

SCHEDULE IA—*contd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.	Proper Stamp-duty.
<p>15. Bond—<i>concl'd.</i></p> <p>where it exceeds Rs. 500 and does not exceed Rs. 600;</p> <p>where it exceeds Rs. 600 and does not exceed Rs. 700;</p> <p>where it exceeds Rs. 700 and does not exceed Rs. 800;</p> <p>where it exceeds Rs. 800 and does not exceed Rs. 900;</p> <p>where it exceeds Rs. 900 and does not exceed Rs. 1,000;</p> <p>and for every Rs. 500 or part thereof in excess of Rs. 1,000.</p> <p>See Administration-Bond (No. 2), Bottomry Bond (No. 16), Customs Bond (No. 26), Indemnity Bond (No. 34), Respondentia Bond (No. 56), Security Bond (No. 57).</p>	<p>Four rupees eight annas.</p> <p>Five rupees four annas.</p> <p>Six rupees.</p> <p>Six rupees twelve annas.</p> <p>Seven rupees eight annas.</p> <p>Three rupees twelve annas.</p>
<p style="text-align: center;"><i>Exemptions.</i></p> <p>Bond, when executed by—</p> <p>(a) headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, section 99, for the due performance of their duties under that Act;</p> <p>(b) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility, shall not be less than a specified sum per mensem.</p>	<p>Ben. Act III of 1876.</p>
<p>16. Bottomry Bond, that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage—</p> <p>where the amount or value secured does not exceed Rs. 10 ;</p> <p>where it exceeds Rs. 10 and does not exceed Rs. 50;</p> <p>where it exceeds Rs. 50 and does not exceed Rs. 100;</p> <p>where it exceeds Rs. 100 and does not exceed Rs. 200;</p>	<p>Three annas.</p> <p>Six annas.</p> <p>Twelve annas.</p> <p>One rupee eight annas.</p>

SCHEDULE IA—*contd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.	Proper Stamp-duty.
16. Bottomry Bond—<i>concl'd.</i> where it exceeds Rs. 200 and does not exceed Rs. 300; where it exceeds Rs. 300 and does not exceed Rs. 400; where it exceeds Rs. 400 and does not exceed Rs. 500; where it exceeds Rs. 500 and does not exceed Rs. 600; where it exceeds Rs. 600 and does not exceed Rs. 700; where it exceeds Rs. 700 and does not exceed Rs. 800; where it exceeds Rs. 800 and does not exceed Rs. 900; where it exceeds Rs. 900 and does not exceed Rs. 1,000; and for every Rs. 500 or part thereof in excess of Rs. 1,000	Two rupees four annas. Three rupees. Three rupees twelve annas. Four rupees eight annas. Five rupees four annas. Six rupees. Six rupees twelve annas. Seven rupees eight annas. Three rupees twelve annas.
17. Cancellation —Instrument of (including any instrument by which any instrument previously executed is cancelled), if attested and not otherwise provided for.	Seven rupees eight annas.
<i>See also</i> RELEASE (No. 55), Revocation of Settlement (No. 58-B), Surrender of Lease (No. 61), Revocation of Trust (No. 64-B).	
18. Certificate of Sale (in respect of each property put up as a separate lot and sold), granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer— (a) where the purchase-money does not exceed Rs. 10 ; (b) where the purchase-money exceeds Rs. 10 but does not exceed Rs. 25 ; (c) in any other case	¹ [Four annas.] ² [Eight annas.] The same duty as a conveyance (No. 23) for a consideration equal to the amount of the purchase-money only.

¹These words were substituted for the words "Three annas" by s. 7(9) (i) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

²These words were substituted for the words "Six annas" by s. 7 (9) (ii), *ibid.*

of 1935.]

SCHEDULE IA—*contd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.	Proper Stamp-duty.
* * * * *	* *
10. Charter-Party , that is to say, any instrument (except an agreement for the hire of a tug-steamer), whereby a vessel or some specified principal part thereof is left for the specified purposes of the charterer, whether it includes a penalty clause or not.	Two rupees.
* * * * *	* *
22. Composition-Deed , that is to say, any instrument executed by a debtor, whereby he conveys his property for the benefit of his creditors or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license, for the benefit of his creditors.	¹ [Twenty rupees.]
23. Conveyance [as defined by section 2 (10)], not being a Transfer charged or exempted under No. 62—	
where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs. 50;	Twelve annas.
where it exceeds Rs. 50 but does not exceed Rs. 100 ;	One rupee eight annas.
where it exceeds Rs. 100 but does not exceed Rs. 200 ;	Three rupees.
where it exceeds Rs. 200 but does not exceed Rs. 300 ;	Four rupees eight annas.
where it exceeds Rs. 300 but does not exceed Rs. 400 ;	Six rupees.
where it exceeds Rs. 400 but does not exceed Rs. 500 ;	Seven rupees eight annas.
where it exceeds Rs. 500 but does not exceed Rs. 600 ;	Nine rupees.
where it exceeds Rs. 600 but does not exceed Rs. 700 ;	Ten rupees eight annas.
where it exceeds Rs. 700 but does not exceed Rs. 800 ;	Twelve rupees.
where it exceeds Rs. 800 but does not exceed Rs. 900 ;	Thirteen rupees eight annas.
where it exceeds Rs. 900 but does not exceed Rs. 1,000;	Fifteen rupees.
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	Seven rupees eight annas.

¹These words were substituted for the words "Twelve rupees eight annas" by s. 7(10) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

SCHEDULE IA—*contd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

	Description of Instrument.	Proper Stamp-duty.
	23. Conveyance—<i>conold.</i> <i>Exemption.</i>	
III of 1914.	Assignment of copyright under the Indian Copyright Act, 1914, section 5.	
	Co-partnership-Deed. See Partnership (No. 46).	
	24. Copy or Extract certified to be a true copy or extract by or by order of any public officer and not chargeable under the law for the time being in force relating to court-fees— (i) if the original was not chargeable with duty, or if the duty with which it was chargeable does not exceed one rupee ; (ii) if any other case not falling within the provisions of section 6A.	 ¹ [One rupee.] ² [Two rupees.]
	<i>Exemptions.</i> (a) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose. (b) Copy of, or extract from, any register relating to births, baptisms, namings, dedications, marriages, divorces, deaths or burials.	
	25. Counterpart or Duplicate of any instrument, chargeable with duty and in respect of which the proper duty has been paid— (a) if the duty with which the original instrument is chargeable does not exceed ³ [two rupees.]	 The same duty as is payable on the original.

¹These words were substituted for the words "Twelve annas" by s. 7(11)(i) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

²These words were substituted for the words "One rupee eight annas" by s. 7 (11) (ii), *ibid.*

³These words were substituted for the words "One rupee eight annas" by s. 7(12)(i), *ibid.*

of 1933.]

SCHEDULE IA—*contd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.	Proper Stamp-duty.
<p>25. Counterpart or Duplicate—<i>concl'd.</i></p> <p>(b) in any other case not falling within the provisions of section 6A.</p> <p style="text-align: center;"><i>Exemption.</i></p> <p>Counterpart of any lease granted to a cultivator, when such lease is exempted from duty.</p>	<p style="text-align: center;">.</p> <p>¹[Two rupees.]</p>
<p>26. Customs Bond—</p> <p>(a) where the amount does not exceed Rs. 1,000 ; ..</p> <p>(b) in any other case</p>	<p>The same duty as a Bottomry Bond (No. 16) for such amount.</p> <p>Ten rupees.</p>
<p>27. Debenture (whether a mortgage debenture or not), being a marketable security transferable—</p> <p>(a) by endorsement or by a separate instrument of transfer ;</p> <p>(b) by delivery</p>	<p>The same duty as a Bottomry Bond (No. 16) for the same amount.</p> <p>The same duty as a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.</p>
<p><i>Explanation.</i>—The term “Debenture” includes any interest coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty.</p> <p style="text-align: center;"><i>Exemption.</i></p>	
<p>A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage-deed, duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debenture-holders : provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed.</p>	

¹These words were substituted for the words “One rupee eight annas” by s 7 (12) (ii) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

SCHEDULE IA—*contd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.	Proper Stamp-duty.
<p>27. Debenture—concl'd.</p> <p style="text-align: center;"><i>Exemption—concl'd.</i></p> <p><i>See also</i> BOND (No. 15) and sections 8 and 55.</p> <p>Declaration of any trust: <i>See</i> Trust (No. 64).</p> <p style="text-align: center;">* * * * *</p> <p>Deposit of Title-deeds : <i>See</i> Agreement relating to deposit of title-deeds, pawn or pledge (No. 6).</p> <p>Dissolution of Partnership : <i>See</i> Partnership (No. 46).</p>	
<p>28. Divorce—Instrument of, that is to say, any instrument by which any person effects the dissolution of his marriage.</p> <p>Dower—Instrument of. <i>See</i> Settlement (No. 58).</p> <p>Duplicate.—<i>See</i> Counterpart (No. 25).</p> <p>30. Entry as an Advocate, Vakil or Attorney on the roll of any High Court, ¹[under the Indian Bar Councils Act, 1926, or] in exercise of powers conferred on such Court by Letters Patent or by the Legal Practitioners Act, 1884—</p> <p style="padding-left: 2em;">(a) in the case of an advocate or vakil ;</p> <p style="padding-left: 2em;">(b) in the case of an attorney</p> <p style="text-align: center;"><i>Exemption.</i></p> <p>Entry of an advocate, vakil or attorney on the roll of any High Court, when he has previously been enrolled in a High Court.</p>	<p>¹[Five rupees.]</p> <p>Seven hundred and fifty rupees.</p> <p>Five hundred rupees.</p>

XXXVIII
of 1926.
IX of
1884.

¹These words were substituted for the words "Two rupees" by s. 7 (13) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

²These words and figure were inserted by s. 19 of the Indian Bar Councils Act, 1926 (XXXVIII of 1926).

of 1899.]

SCHEDULE IA—*contd.*

[*Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.*]

Description of Instrument.	Proper Stamp-duty.
31. Exchange of property —Instrument of ..	The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property of greatest value as set forth in such instrument.
Extract. See Copy (No. 24).	
32. Further charge —Instrument of, that is to say, any instrument imposing a further charge on mortgaged property—	
(a) when the original mortgage is one of the description referred to in clause (a) of Article No. 40 (that is, with possession) ;	The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the further charge secured by such instrument.
(b) when such mortgage is one of the description referred to in clause (b) of Article No. 40 (that is, without possession)—	
(i) if at the time of execution of the instrument of further charge possession of the property is given or agreed to be given under such instrument ;	The same duty as a Conveyance (No. 23) for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made), less the duty already paid on such original mortgage and further charge.
(ii) if possession is not so given ..	The same duty as a Bond (No. 15) for the amount of the further charge secured by such instrument.
33. Gift —Instrument of, not being a Settlement (No. 58), or Will or Transfer (No. 62).	The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property as set forth in such instrument.
Hiring agreement or agreement for service. See Agreement (No. 5).	

SCHEDULE IA—*contd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.	Proper Stamp-duty.
34. Indemnity Bond	The same duty as a Security-bond (No. 57) for the same amount.
Inspectorship-Deed. See Composition-Deed (No. 22).	
35. Lease, including a under-lease or sub-lease and any agreement to let or sub-let— (a) where by such lease the rent is fixed and no premium is paid or delivered— (i) where the lease purports to be for a term of less than one year ; (ii) where the lease purports to be for a term of not less than one year but not more than five years ; (iii) where the lease purports to be for a term exceeding five years and not exceeding ten years ; (iv) where the lease purports to be for a term exceeding ten years but not exceeding twenty years ; (v) where the lease purports to be for a term exceeding twenty years but not exceeding thirty years ;	The same duty as a Bottomry Bond (No. 16) for the whole amount payable or deliverable under such lease. The same duty as a Bottomry Bond (No. 16.) for the amount or value of the average annual rent reserved. The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent reserved. The same duty as a Conveyance (No. 23) for a consideration equal to twice the amount or value of the average annual rent reserved. The same duty as a Conveyance (No. 23) for a consideration equal to three times the amount or value of the average annual rent reserved.

of 1899.]

SCHEDULE IA—*contd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.	Proper Stamp-duty
<p>35. Lease—<i>contd.</i></p> <p>(vi) where the lease purports to be for a term exceeding thirty years but not exceeding one hundred years ;</p> <p>(vii) where the lease purports to be for a term exceeding one hundred years or in perpetuity ;</p> <p>(viii) where the lease does not purport to be for any definite term ;</p> <p>(b) where the lease is granted for a fine or premium, or for money advanced and where no rent is reserved;</p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to four times the amount or value of the average annual rent reserved.</p> <p>The same duty as a Conveyance (No. 23) for a consideration equal in the case of a lease granted solely for agricultural purposes to one-tenth and in any other case to one-sixth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.</p> <p>The same duty as a Conveyance (No. 23) for a consideration equal to three times the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.</p> <p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease.</p>

SCHEDULE IA—*contd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.	Proper Stamp-duty.
<p>35. Lease—<i>contd.</i></p> <p>(c) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved.</p> <p style="text-align: center;"><i>Exemptions.</i></p> <p>(a) Lease, executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink), without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees.</p> <p>In this exemption a lease for the purposes of cultivation shall include a lease of lands for cultivation together with a homestead or tank.</p> <p>(b) Leases of fisheries granted under the Burma Fisheries Act, 1905, or the Upper Burma Land and Revenue Regulation, 1889.</p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered :</p> <p>Provided that, in any case when an agreement to lease is stamped with the <i>ad valorem</i> stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed twelve annas.</p>

of 1935.]

SCHEDULE IA—*contd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.	Proper Stamp-duty.
35. Lease—<i>conold.</i>	
<i>Exemptions—conold.</i>	
<i>Explanation.</i> — When a lessee undertakes to pay any recurring charge, such as Government revenue, the landlord's share of cesses or the owner's share of municipal rates or taxes, which is by law recoverable from the lessor, the amount so agreed to be paid by the lessee shall be deemed to be part of the rent.	
* * * * *	* * *
* * * * *	* * *
Letter of Guarantee. <i>See</i> Agreement (No. 5).	
38. Letter of License , that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion.	¹ [Fifteen rupees.]
39. Memorandum of Association of a Company—	
(a) if accompanied by articles of association under section 17 of the Indian Companies Act, 1913 :	Thirty rupees. VII of 1918.
² [(b) if not so accompanied—	
(i) where the nominal share capital does not exceed one lakh of rupees ;	Eighty rupees.
(ii) where the nominal share capital exceeds one lakh of rupees.	One hundred and thirty rupees.]
<i>Exemption.</i>	
Memorandum of any association not formed for profit and registered under section 26 of the Indian Companies Act, 1913.	

¹These words were substituted for the words "Twelve rupees eight annas" by s. 7 (14) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

²Clause (b) was substituted for the original clause (b) by s. 7 (15), *ibid.*

SCHEDULE I—*contd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.	Proper Stamp-duty.
<p>40. Mortgage-deed, not being an Agreement relating to deposit of title-deeds, pawn or pledge (No. 6), Bottomry Bond (No. 16), Mortgage of a Crop (No. 41), Respondentia Bond (No. 56), or Security Bond (No. 57) :—</p>	
<p>(a) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given ;</p>	<p>The same duty as a Conveyance (No. 23), for a consideration equal to the amount secured by such deed.</p>
<p>(b) when possession is not given or agreed to be given as aforesaid ;</p>	<p>The same duty as a Bond (No. 15) for the amount secured by such deed.</p>
<p><i>Explanation.</i>—A mortgagor who gives to the mortgagee a power-of-attorney to collect rents or a lease of the property mortgaged or part thereof, is deemed to give possession within the meaning of this article.</p>	
<p>(c) when a collateral or auxiliary or additional or substituted security or by way of further assurance for the abovementioned purpose where the principal or primary security is duly stamped—</p>	
<p>for every sum secured not exceeding Rs. 1,000</p>	<p>Twelve annas.</p>
<p>and for every Rs. 1,000 or part thereof secured in excess of Rs. 1,000.</p>	<p>¹[One rupee.]</p>
<p><i>Exemptions.</i></p>	
<p>(1) Instruments executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or by their sureties as security for the repayment of such advances.</p>	
<p>(2) Letter of hypothecation accompanying a bill of exchange.</p>	

XIX of
1883.
XII of
1884.

¹These words were substituted for the words "Twelve annas" by s. 7 (16) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

of 1935.]

SCHEDULE 1A—*contd.*

[*Schedule 1A.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.*]

Description of Instrument.	Proper Stamp-duty.
<p>41. Mortgage of a Crop, including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether the crop is or is not in existence at the time of the mortgage—</p> <p>(a) when the loan is repayable not more than three months from the date of the instrument—</p> <p>for every sum secured not exceeding Rs. 200 ..</p> <p>and for every Rs. 200 or part thereof secured in excess of Rs. 200 ;</p> <p>(b) when the loan is repayable more than three months but not more than eighteen months from the date of the instrument—</p> <p>for every sum secured not exceeding Rs. 100 ; ..</p> <p>and for every Rs. 100 or part thereof secured in excess of Rs. 100.</p>	<p>One and a half annas.</p> <p>One and a half annas.</p> <p>¹[Four annas.]</p> <p>¹[Four annas.]</p>
<p>42. Notarial Act, that is to say, any instrument, endorsement, note, attestation, certificate, or entry not being a Protest (No. 50) made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public.</p> <p>See also Protest of Bill or Note (No. 50).</p>	<p>Two rupees.</p>
<p>43. Note or Memorandum, sent by a broker or agent to his principal intimating the purchase or sale on account of such principal—</p> <p>(a) of any goods exceeding in value twenty rupees ..</p> <p>¹[(b) of any stock or marketable security exceeding in value twenty rupees but not being a Government security ;</p>	<p>²[Four annas.]</p> <p>Two annas for every Rs. 5,000 or part thereof of the value of the stock or security.</p>

¹These words were substituted for the words "Three annas" by s. 7(17) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

²These words were substituted for the words "Three annas" by s. 7(18) (i), *ibid.*

³Clauses (b) and (c) were substituted for the original clause (b) by s. 7(18) (ii), *ibid.*

SCHEDULE IA—*contd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 of the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.	Proper Stamp-duty
43. Note or Memorandum—<i>concl'd.</i> (c) of a Government security	Subject to a maximum of twenty rupees [two annas for every Rs. 10,000 or part thereof of the value of the security.]
44. Note of Protest by the Master of a Ship. <i>See also Protest by the Master of a Ship (No. 51).</i> * * * * *	One rupee. * * *
Partition—Instrument of [as defined by section 2(15).]	The same duty as a Bond (No. 15) for the amount of the value of the separated share or shares of the property. <i>N.B.</i> —The largest share remaining after the property is partitioned (or if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated : Provided always that— (a) when an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than ¹ [one rupee;]

¹These words were substituted for the words "twelve annas" by s. 7(19) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

SCHEDULE IA—*contd.*

[*Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.*]

Description of Instrument.	Proper Stamp duty.
45. Partition —Instrument of [as defined by section 2 (15).]— <i>concl'd.</i>	<p>(b) where land is held on Revenue Settlement for a period not exceeding thirty years and paying the full assessment, the value for the purpose of duty shall be calculated at not more than five times the annual revenue ;</p> <p>(c) where a final order for effecting a partition passed by any Revenue-authority or any Civil Court, or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed ¹[one rupee].</p>
46. Partnership — A.—Instrument of—	Five rupees.
(a) where the capital of the partnership does not exceed Rs. 500 ;	
(b) in any other case.	Twenty rupees.
B.—Dissolution of—	Ten rupees.
Pawn or pledge. See Agreement relating to deposit of title-deeds, pawn or pledge (No. 6).	
* * * * *	* * *

¹These words were substituted for the words "Twelve annas" by s. 7 (19) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

SCHEDULE IA—*contd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.	Proper Stamp-duty.
<p>48. Power-of-attorney [as defined by section 2 (21)], not being a proxy—</p> <p>(a) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents ;</p> <p>(b) when required in suits or proceedings under the Presidency Small Cause Courts Act, 1882 ;</p> <p>(c) when authorizing one person or more to act in a single transaction other than the case mentioned in clause (a) ;</p> <p>(d) when authorizing not more than five persons to act jointly and severally in more than one transaction or generally ;</p> <p>(e) when authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally ;</p> <p>(f) when given for consideration and authorizing the attorney to sell any immoveable property ;</p> <p>(g) in any other case.</p>	<p>[One rupee.]</p> <p>One rupee.</p> <p>[Two rupees.]</p> <p>[Ten rupees.]</p> <p>[Twenty rupees.]</p> <p>The same duty as a Conveyance (No. 23) for the amount of the consideration.</p> <p>[Two rupees] for each person authorized.</p> <p>N.B.—The term "Registration" includes every operation incidental to registration under the Indian Registration Act, 1908.</p>

XV of
1882.

XVI of
1908.

¹These words were substituted for the words "Twelve annas" by s. 7 (20) (i) of the Indian Stamp (Bengal Amendment) Act, 1935 (Bengal Act XII of 1935).

²These words were substituted for the words "One rupee eight annas" by s. 7 (20) (ii), *ibid.*

³These words were substituted for the words "Seven rupees eight annas" by s. 7 (20) (iii), *ibid.*

⁴These words were substituted for the words "Fifteen rupees" by s. 7 (20) (iv), *ibid.*

⁵These words were substituted for the words "One rupee eight annas" by s. 7 (20) (v), *ibid.*

of 1935.]

SCHEDULE IA—*contd.*

[*Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.*]

Description of Instrument.	Proper Stamp-duty.
<p>48. Power-of-attorney—<i>concl'd.</i></p> <p><i>Explanation.</i>—For the purposes of this article more persons than one when belonging to the same firm shall be deemed to be one person.</p> <p style="text-align: center;">* * * * *</p>	<p style="text-align: center;">* * * *</p>
<p>50. Protest of Bill or Note, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note.</p>	<p>Two rupees.</p>
<p>51. Protest by the Master of a ship, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such.</p>	<p>Two rupees.</p>
<p><i>See also Note of Protest by the Master of a Ship (No. 44).</i></p> <p style="text-align: center;">* * * * *</p> <p style="text-align: center;">* * * * *</p>	<p style="text-align: center;">* * * *</p> <p style="text-align: center;">* * * *</p>
<p>54. Reconveyance of mortgaged property—</p> <p>(a) if the consideration for which the property was mortgaged does not exceed Rs. 1,000 ;</p> <p>(b) in any other case ..</p>	<p>The same duty as a Conveyance (No. 23) for the amount of such consideration as set forth in the re-conveyance.</p> <p>Fifteen rupees.</p>
<p>55. Release, that is to say, any instrument (not being such a release as is provided for by section 23A), whereby a person renounces a claim upon another person or against any specified property—</p> <p>(a) if the amount or value of the claim does not exceed Rs. 1,000 ;</p> <p>(b) in any other case ..</p>	<p>The same duty as a Bond (No. 15) for such amount or value as set forth in the release.</p> <p>¹[Ten rupees.]</p>

¹These words were substituted for the words "Seven rupees eight annas" by s. 7 (21) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

SCHEDULE IA—*contd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.	Proper Stamp-duty.
<p>56. Respondentia Bond, that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination.</p> <p>Revocation of any Trust or Settlement. See Settlement (No. 58) ; Trust (No. 64).</p>	<p>The same duty as a Bot-tomry Bond (No. 16) for the amount of the loan secured.</p>
<p>57. Security-Bond or Mortgage-Deed, executed by way of security for the due execution of an office—</p>	

ige 846—

In Article No. 57 in Schedule 1A, *after* the words “executed by way of security” in the first column, *insert* the words “for the discharge of a liability, or”.

as a
for the
l.

[Inserted by Ben. Act VII of 1939, section 2(I).]

[No. 1, dated the 15th September, 1939.]

Exemptions.

Bond or other instrument when executed—

- (a) by headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, section 99, for the due performance of their duties under that Act ;
- (b) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital, or any other object of public utility shall not be less than a specified sum per mensem ;
- (c) under No. 3-A of the rules made by the “[Provincial Government of Bombay,] under section 70 of the Bombay Irrigation Act, 1879 ;
- (d) executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists’ Loans Act, 1884, or by their sureties, as security for the repayment of such advances ;

Ben. Act
III of 1876.

Bom. Act
VII of
1879.

XIX of
1883.
XII of
1884.

*These words were substituted for the words “Seven rupees eight annas” by s. 7 (22) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

†These words were substituted for the words “Governor of Bombay in Council” by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1927.

of 1935.]

SCHEDULE IA—*concl'd.*

[*Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.*]

Description of Instrument.	Proper Stamp-duty.
<p>57. Security-Bond or Mortgage-Deed—<i>concl'd.</i></p> <p style="text-align: center;"><i>Exemptions—concl'd.</i></p> <p>(e) executed by ¹[servants of the Crown] or their sureties to secure the due execution of an office, or the due accounting for money or other property received by virtue thereof.</p> <p>58. Settlement—</p> <p>A—Instrument of (including a deed of dower)</p> <p style="text-align: center;"><i>Exemptions.</i></p> <p>(a) Deed of dower executed on the occasion of a marriage between Muhammadans.</p> <p>(b) Hludassa, that is to say, any settlement of immovable property executed by a Buddhist in Burma for a religious purpose in which no value has been specified and on which a duty of Rs. 10 has been paid.</p>	<p>The same duty as a Bottomry Bond (No. 16) for a sum equal to the amount or value of the property settled as set forth in such settlement :</p> <p>Provided that, where an agreement to settle is stamped with the stamp required for an instrument of settlement, and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed ²[one rupee.]</p>

¹These words were substituted for the words "officers of Government" by the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922) as adapted by Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1927.

²These words were substituted for the words "Twelve annas" by s. 7 (23) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

SCHEDULE IA—*contd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.	Proper Stamp duty.
<p>58. Settlement—<i>concl'd.</i></p> <p>B.—Revocation of— ..</p> <p style="text-align: center;"><i>See also</i> Trust (No. 64).</p>	<p>The same duty as a Bot- tomry Bond (No. 16) for a sum equal to the amount or value of the property concerned, as set forth in the instru- ment of Revocation, but not exceeding fifteen rupees.</p>
<p>59. Share Warrants to bearer issued under the Indian Companies Act, 1913.</p> <p style="text-align: center;"><i>Exemptions.</i></p> <p>Share warrant when issued by a company in pursuance of the Indian Companies Act, 1913, section 43, to have effect only upon payment, as composition for that duty, to the Collector of Stamp-revenue of—</p> <p>(a) One and a half <i>per centum</i> of the whole subscribed capital of the company ; or</p> <p>(b) if any company which has paid the said duty or composition in full, subsequently issues an addition to its subscribed capital—one and a half <i>per centum</i> of the additional capital so issued.</p> <p style="text-align: center;">* * * * * * *</p> <p style="text-align: center;">* * * * * * *</p>	<p>One and a half times the duty payable on a Conveyance (No. 23) for a consideration equal to the nominal amount of the shares specified in the warrant.</p> <p style="text-align: center;">* * * *</p> <p style="text-align: center;">* * * *</p>
<p>61. Surrender of Lease—</p> <p>(a) when the duty with which the lease is chargeable does not exceed seven rupees eight annas ;</p> <p>(b) in any other case ..</p> <p style="text-align: center;"><i>Exemption.</i></p> <p>Surrender of lease, when such lease is exempted from duty.</p>	<p>The duty with which such lease is chargeable.</p> <p>Seven rupees eight annas.</p>

VII of
1913.

of 1939.]

SCHEDULE IA—contd.

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.	Proper Stamp duty.
62. Transfer (whether with or without consideration)—	
(a) of shares in an incorporated company or other body corporate ;	One-half of the duty payable on a Conveyance (No. 23) for a consideration equal to the value of the share.
(b) of debentures, being marketable securities,	One-half of the duty payable on a Conveyance.
Page 849—	
In clause (c) in Article No. 62 in Schedule 1A, <i>after</i> the word "mortgage-deed" in the first column where it first occurs, <i>insert</i> the words and figure "in respect of which duty has been paid under Article No. 40".	
[Inserted by Ben. Act VII of 1939, section 2(2).] [No. 1, dated the 15th September, 1939.]	
(ii) in any other case	
(d) of any property under the Administrator-General's Act, 1913, section 25 ;	Fifteen rupees.
(e) of any trust-property without consideration from one trustee to another trustee, or from a trustee to a beneficiary.	Seven rupees eight annas or such smaller amount as may be chargeable under clauses (a) to (c) of this article.
<i>Exemptions.</i>	
Transfers by endorsement—	
(a) of a bill of exchange, cheque or promissory note ;	
(b) of a bill of lading, delivery order, warrant for goods, or other mercantile document of title goods ;	
(c) of a policy of insurance ;	
(d) of securities of the ² [Central Government]. See also section 8.	

III of
1913.

¹These words were substituted for the words "Seven rupees eight annas" by s. 7 (24) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

²These words were substituted for the words "Government of India" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

SCHEDULE IA—*concl'd.*

[Schedule IA.—Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.]

Description of Instrument.	Proper Stamp-duty.
<p>63. Transfer of Lease by way of assignment, and not by way of under-lease.</p> <p style="text-align: center;">• <i>Exemption.</i></p> <p>Transfer of any lease exempt from duty.</p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the consideration for the transfer.</p>
<p>64. Trust—</p> <p>A.—DECLARATION OF—of, or concerning, any property when made by any writing not being a Will.</p> <p>B.—REVOCATION OF—of, or concerning, any property when made by any instrument other than a Will.</p> <p style="text-align: center;"><i>See also Settlement (No. 58).</i></p> <p>Valuation. <i>See Appraisement (No. 8).</i></p> <p>Vakil. <i>See Entry as a Vakil (No. 30).</i></p>	<p>The same duty as a Bottomry Bond (No. 16) for a sum equal to the amount or value of the property concerned, as set forth in the instrument, but not exceeding twenty-two rupees eight annas.</p> <p>The same duty as a Bottomry Bond (No. 16) for a sum equal to the amount or value of the property concerned, as set forth in the instrument, but not exceeding fifteen rupees.</p>
<p>65. Warrant for Goods, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be.</p>	<p>¹[Eight annas.]</p>

¹These words were substituted for the words "Six annas" by s. 7 (25) of the Indian Stamp (Bengal Amendment) Act, 1935 (Bengal Act XII of 1935).

of 1899]

Schedule II.—[*Enactments repealed.*] *Rep. by the Repealing and amending Act, 1914 (X of 1914).*

Act X of 1910.

(The Indian Museum Act 1910.)¹

(18th March 1910.)

An Act to consolidate and amend the law relating to the Indian Museum.

Whereas it is expedient to consolidate and amend the law relating to the Indian Museum; It is hereby enacted as follows:—

PRELIMINARY.

1. (1) This Act may be called the Indian Museum Act, 1910. Short title and commencement.

(2) It shall come into force on such date² as the ³[Central Government], by notification in the ⁴[Official Gazette], may direct.

Incorporation of the Trustees.

2. (1) The Trustees of the Indian Museum (hereinafter called the Trustees) shall be— Constitution and incorporation of the Trustees of the Indian Museum.

(a) the ⁵[seven] persons for the time being performing the duties of the following offices, namely:—

- (i) the Accountant-General of Bengal;
- (ii) the Principal, Government School of Art, Calcutta;
- (iii) the Director, Geological Survey of India;
- ⁶[(iv) the Director, Zoological Survey of India;]

¹LEGISLATIVE PAPERS.—For Report of Select Committee, *see* Gazette of India, 1910, Pt. V, p. 65; for Proceedings in Council, *see* *ibid.*, Pt. VI, pp. 91, 159 and 284.

LOCAL EXTENT.—This Act applies only to the Indian Museum, which is situated in Calcutta.

²*i.e.*, the 1st June, 1910—*see* Gazette of India, 1910, Pt. I, p. 411.

³These words were substituted for the words "Governor General in Council" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words "Gazette of India", *ibid.*

⁵This word was substituted for the word "six" by s. 2 (a) of the Indian Museum (Amendment) Act, 1922 (XVII of 1922).

⁶Sub-clause (iv) was substituted for the original sub-clause by s. 2 (b), *ibid.*

(Sec. 3.)

(v) the Director-General of Archæology; ^{1*}

²[(vi) the Superintendent, Archæological Section of the Museum; and]

³[(vii)] the Officer in charge of the Industrial Section of the Museum;

⁴[(b) four other persons to be nominated by the Central Government;]

(d) one other person to be nominated by the Council of the Asiatic Society of Bengal;

(e) one other person to be nominated by the Bengal Chamber of Commerce;

(f) one other person to be nominated by the British Indian Association, Calcutta;

(g) one other person to be nominated by the Syndicate of the Calcutta University; and

(h) three other persons to be nominated by the Trustees.

(2) The Trustees shall be a body corporate, by the name of "The Trustees of the Indian Museum," with perpetual succession and a common seal, and in that name shall sue and be sued, and shall have power to acquire and hold property, to enter into contracts, and to do all acts necessary for and consistent with the purposes of this Act.

(3) The nominated Trustees shall, save as herein otherwise provided, hold office for a period of three years:

Provided that the authority nominating a Trustee may extend his term of office for one or more like periods.

Minimum
number
of Trustees
and quorum.

3. (1) The powers of the said body corporate may only be exercised so long and so often as there are nine members thereof.

(2) The quorum necessary for the transaction of business at a meeting of the Trustees shall not be less than six.

¹The word "and" was omitted by s. 2 (c) of the Indian Museum (Amendment) Act, 1922 (XVII of 1922).

²Sub-clause (vi) was inserted by s. 2 (c), *ibid.*

³Sub-clause (vi) was re-numbered as sub-clause (vii) by s. 2 (c), *ibid.*

⁴Clause (b) was substituted for clauses (b) and (c) by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1910.]

(Secs. 4—7.)

4. If a nominated Trustee—

Power to
appoint new
Trustees.

- (a) die, or
- (b) is absent from the meetings of the Trustees for more than twelve consecutive months, or
- (c) desires to be discharged, or
- (d) refuses or becomes incapable to act, or
- (e) is appointed to perform the duties of any office specified in section 2, clause (a),

the authority which nominated the Trustee may nominate a new Trustee in his place.

5. From the commencement of this Act the term of office of all persons appointed to be Trustees under the Indian Museum Act, 1876,¹ shall cease.

Vacation of
office by
existing
Trustees.

XXII of
1876.

Property and powers of the Trustees.

6. (1) All the property, whether moveable or immoveable, which at the commencement of this Act is held by the Trustees of the Indian Museum constituted by the Indian Museum Act, 1876,¹ on trust for the purposes of the said Museum shall, together with any such property which may hereinafter be given, bequeathed, transferred or acquired for the said purposes, vest in the Trustees of the Indian Museum constituted by this Act on trust for the purposes of the said Museum :

Property
vested in
or placed
under the
control of
the Trustees.

Provided that the Trustees may expend the capital of any portion of such property which may consist of money on the maintenance, improvement and enlargement of the collections deposited in, presented to or purchased for the said Museum or otherwise for the purposes of the same as they may think fit.

(2) The Trustees shall have the exclusive possession, occupation and control, for the purposes of such trust, of the land specified in the schedule, including any buildings which may have been, or may hereafter be, erected thereon, other than those portions thereof which have been set apart by the Trustees for the records and offices of the Geological Survey of India.

7. Subject to the provisions of any by-laws made in this behalf, the Trustees may, from time to time,—

Power to
Trustees
of exchange,
sale and
destroy
articles in
collection.

- (a) deliver, by way of loan, to any person the whole or any portion of, or any article contained in, any collection vested in them under this Act;

¹Act XXII of 1876 is repealed by section 17 of the present Act.

[Act X]

(Secs. 8, 9.)

- (b) exchange or sell duplicates of articles contained in any such collection and take or purchase, in the place of such duplicates, such articles as may in their opinion be worthy of preservation in the Museum;
- (c) present duplicates of articles contained in any such collection to other Museums in British India; and
- (d) remove and destroy any article contained in any such collection.

Power to
Trustees
to make
by-laws.

8. (1) The trustees may from time to time, with the previous sanction of the ¹[Central Government], make by-laws, consistent with this Act, for any purpose necessary for the execution of their trust.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the summoning, holding and adjournment of general and special meetings of the Trustees;
- (b) the securing of the attendance of Trustees at such meetings;
- (c) the provision and keeping of minute-books and account-books;
- (d) the compiling of catalogues;
- (e) the lending of articles contained in the collections vested in the Trustees;
- (f) the exchange and sale, and the presentation to other Museums in British India, of duplicates of articles contained in such collections;
- (g) the removal and destruction of articles contained in such collections; and
- (h) the general management of the Museum.

Power to
Trustees to
appoint
officers and
servants.

9. Subject to such regulations and conditions as may be prescribed by them in this behalf, the Trustees shall appoint such officers and servants as may be necessary or proper for the care or management of the trust-property, and may assign to such officers and servants such pay as they may think fit:

Provided that—

²[(a) no officer shall be appointed without the approval of the Central Government; and]

¹See foot-note 3 on p. 853, *ante*.

²Proviso (a) was substituted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1910.]

(Secs. 10-12.)

- (b) no new office shall be created, and no salaries of officers shall be altered, without the previous sanction of the ¹[Central Government].

Duties of the Trustees.

10. (1) The Trustees shall furnish on or before the first day of December in each year—

Trustees to furnish annual reports and accounts.

- (a) to the ²[Central Government] a report of their several proceedings for the previous financial year, and
- (b) to such auditor as the ¹[Central Government] appoints in this behalf, accounts of all moneys expended by the Trustees during the previous financial year, supported by the necessary vouchers.

(2) The Trustees shall cause such report and accounts to be published annually for general information.

11. (1) The Trustees shall cause every article in the collections in the said Indian Museum formerly belonging to the Asiatic Society of Bengal and all additions that may hereafter be made thereto otherwise than by purchase under section 6, to be marked and numbered and (subject to the provisions contained in section 7 and 16) to be kept and preserved in the said Museum with such marks and numbers.

Collections of Asiatic Society to be kept distinguished in the Museum.

(2) An inventory of such additions shall be made by the said Society, one copy whereof shall be signed by the Trustees and delivered to the said Society, and another copy shall be signed by the Council of the said Society and delivered to the Trustees, and shall be kept by them along with the inventory delivered to the predecessors in office of the Trustees when the said collections were deposited in the said Museum.

12. All objects taken in exchange and articles purchased under section 7 and all moneys realised from sales made in accordance with the terms of the same section shall be held on trust and subject to powers and declarations corresponding as nearly as may be with the trusts, powers and declarations by this Act limited and declared.

Articles received in exchange or purchased and moneys realized from sale to be held on trust.

¹See foot-note 3 on p. 853, *ante*.

²These words were substituted for the words "Government of India" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Act X

(Secs. 13—16.)

Supplemental Provisions.

Officers
under Act
to be public
servants and
subject to
Civil Service
Regulations.

13. All officers and servants appointed under this Act shall be deemed to be public servants within the meaning of the Indian Penal Code; and, so far as regards their salaries, allowances and pensions and their leave of absence from duty, they shall be subject to the rules which ^{1*} * * * would be applicable if their service was service under ²[the Central Government.] Act XLV
of 1860.

Power to
Trustees to keep
collections not
belonging to
them.

14. Notwithstanding anything hereinbefore contained, the Trustees may, if they think fit, with the previous sanction of the ³[Central Government] and subject in each case to such conditions as ⁴[it] may approve and to such rules as ⁴[it] may prescribe, assume the custody and administration of collections which are not the property of the Trustees for the purposes of their trust under this Act and keep and preserve such collections either in the Indian Museum or elsewhere:

Provided that if the trust constituted by this Act is at any time determined, any such collections shall not by reason of their then being in the Indian Museum become the property of His Majesty.

Power to
Trustees to
part with certain
property in their
possession.

15. Subject to such conditions as the Central Government may approve, the Trustees may deliver possession of the whole or any part of the property described in the schedule to such person as that Government may appoint.

Property in
collections
on determination
of
trust.

16. If the trust constituted by this Act is at any time determined,—

- (a) the collections and additions mentioned in section 11 shall become the property of the said Asiatic Society or their assigns, and
- (b) all the other collections then in the said Indian Museum shall, save as otherwise provided by section 14, become the property of His Majesty.

¹The words "under the Civil Service Regulations for the time being in force" were omitted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the word "Government", *ibid.*

³See foot-note 3 on p. 853, *ante*.

⁴This word was substituted for the word "he" by paragraph 5 (2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵Section 15 was substituted for the original section 15 by the 1st Sch., *ibid.*

of 1910.]

(*Sec. 17.—The Schedule.*)

- **17.** [*Repeals.*] *Rep. by the Repealing and Amending Act, 1914 (X of 1914).*

THE SCHEDULE.

(*See sections 6 and 15.*)

Land bounded—

- on the north side by the premises No. 2, Sudder Street, and by Sudder Street;
- on the west side by Chowringhee Road and by the premises No. 29, Chowringhee Road (occupied by the Bengal United Service Club);
- on the south side by the premises No. 29, Chowringhee Road, by Kyd Street, and by the premises No. 4, Chowringhee Lane, and
- on the east side by the premises No. 15, Kyd Street, and the premises Nos. 4, 3, 2 and 1, Chowringhee Lane,

together with all buildings, roads and tanks existing or erected thereon, and all easements appertaining thereto.

Act XVIII of 1911.

[The Calcutta Improvement (Appeals) Act, 1911.]¹

(23rd September 1911.)

Ben. Act
V of 1911.

An Act to modify certain provisions of the Calcutta Improvement Act, 1911.

Whereas it is expedient to modify the provisions of the Calcutta Improvement Act, 1911, so as to provide in certain cases for an appeal to the High Court from the awards of the Tribunal constituted under that Act; It is hereby enacted as follows:—

1. This Act may be called the Calcutta Improvement (Appeals) Act, 1911. Short title.

2. In this Act,—

Definitions.

(1) “Court” means the High Court of Judicature at Fort William in Bengal; and

(2) “Tribunal” has the same meaning as in the Calcutta Improvement Act, 1911.

3. (1) Notwithstanding anything contained in the Calcutta Improvement Act, 1911, an appeal shall lie to the Court in any of the following cases, namely:— Appeal from awards of the Tribunal.

(a) where the decision is that of the President of the Tribunal sitting alone in pursuance of clause (b) of section 77 of the said Act:

(b) where the decision is that of the Tribunal, and

(i) the President of the Tribunal grants a certificate that the case is a fit one for appeal, or

(ii) the Court grants special leave to appeal:

Provided that the Court shall not grant such special leave unless the President has refused to grant a certificate under sub-clause (i) and the amount in dispute is five thousand rupees or upwards.

¹LEGISLATIVE PAPERS.—For Statement of Object and Reasons, see Gazette of India, 1911, Pt. V, p. 118; for Proceedings in Council see *ibid*, Pt. VI, pp. 635, 636 and 680 to 687.

LOCAL EXTENT.—The local extent of this Act is the same as that of Ben. Act V of 1911.

[Act XVIII of 1911.]

(Secs.—4—6.)

(2) An appeal under clause (b) of sub-section (1) shall only lie on ¹[one or more of] the following grounds, namely:—

- (i) the decision being contrary to law or to some usage having the force of law;
- (ii) the decision having failed to determine some material issue of law or usage having the force of law:
- (iii) a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the case upon the merits.

Procedure of such appeals.

4. Subject to the provisions of section 3, the provisions of the Code of Civil Procedure, 1908, with respect to appeals from original decrees shall, so far as may be, apply to appeals under this Act. Act V of 1908.

Execution of orders of Court.

5. The Chief Judge of the Court of Small Causes of Calcutta shall, on application, execute any order passed by the Court on ²[appeal under this Act as if it were] a decree made by himself.

Period of limitation for such appeals.

6. An appeal under section 3 shall be deemed to be an appeal under the Code of Civil Procedure, 1908, within the meaning of No. 156 of the First Schedule to the Indian Limitation Act, 1908.

IX of 1908.

¹These words were inserted by the Repealing and Amending Act 1914 (X of 1914).

²These words were substituted for the words "as if it was" by the Repealing and Amending Act, 1914 (X of 1914).

Act VII of 1912.

(The Bengal, Bihar and Orissa and Assam Laws Act, 1912.)¹

(26th March 1912.)

An Act to make certain provisions regarding the application of the law in force in the Presidency of Fort William in Bengal, [the province of Bihar and Orissa and the Province of Assam].

Whereas a Governor and an Executive Council have been appointed² for the Presidency of Fort William in Bengal;

And whereas by Proclamation published under Notification No. 290,³ dated the twenty-second day of March, 1912, the Governor General in Council, with the sanction of His Majesty, has been pleased to declare and appoint that, on and from the first day of April, 1912, the territory mentioned in Schedule A shall be and continue subject to the said Presidency of Fort William in Bengal;

24 & 25
Vict., c. 67.

[And whereas, by Proclamation published under Notification No. 289, dated the twenty-second day of March, 1912, the Governor General, with the sanction of His Majesty, has been pleased to constitute the territory mentioned in Schedule B to be, for the purposes of the Indian Councils Act, 1861, a Province to which the provisions of that Act touching the making of Laws and Regulations for the peace and good government of the Presidencies of Fort St. George and Bombay shall be applicable, and to direct that the said Province shall be called the Province of Bihar and Orissa, and further to appoint a Lieutenant-Governor of that Province;

And whereas, by Proclamation published under Notification No. 291, dated the twenty-second day of March, 1912, the Governor General in Council, with the sanction and approbation of the Secretary of State

¹LEGISLATIVE PAPERS.—For Proceedings in Council, see Gazette of India, 1912, Pt. VI, pp. 594 to 596.

LOCAL EXTENT.—This Act extends to the Province of Bengal, the Province of Bihar and Orissa and the Province of Assam—See the title and preamble. It applies to the Chittagong Hill-tracts.

²For proclamation and notification of appointments, see pages 1 and 3 of the *Calcutta Gazette*, Extraordinary of the 1st April, 1912.

³Published on page 2 of the Gazette of India, Extraordinary of the 22nd March, 1912.

(Secs. 1-4.)

for India, has been pleased to take under his immediate authority and management the territory mentioned in Schedule C, which was formerly included within the Province of Eastern Bengal and Assam, and to form the same into a Chief Commissionership, to be called the Chief Commissionership of Assam, and further to appoint a Chief Commissioner therefor;]

And whereas it is expedient to make certain provisions regarding the application of the law in force in the territories affected by the said Proclamations;

It is hereby enacted as follows:—

Short title
and com-
mencement.

1. (1) This Act may be called the Bengal, Bihar and Orissa and Assam Laws Act, 1912; and

(2) It shall come into force on the first day of April, 1912.

Saving of
territorial
application of
enactments.

2. The Proclamations referred to in the preamble shall not be deemed to have effected any change in the territorial application of any enactment, notwithstanding that such enactment may be expressed to apply or extend to the territories for the time being under a particular administration.

Construction
of certain
references in
enactments
in force in
territory
mentioned in
Schedules A,
B and C.

3. All enactments made by any authority in British India, and all notifications, orders, schemes, rules, forms and by-laws issued, made or prescribed under such enactments, which, immediately before the commencement of this Act, were in force in, or prescribed for, any of the territory mentioned in Schedule A, [*Schedule B or Schedule C*], shall, in their application to that territory, be construed as if references therein to the authorities, territory or Gazettes mentioned in column 1 of Schedule D were references to the authorities, territory or Gazettes respectively mentioned or referred to opposite thereto in column 2 of that schedule:

Constitution
of Board of
Revenue in
Bihar and
Orissa.

4. [*There shall be a Board of Revenue for the Province of Bihar and Orissa, to which the provisions of the Bengal Board of Revenue Regulation, 1822, and the Bengal Board of Revenue Act, 1850, shall, so far as may be, apply.*]

III of 1822
XLIV of
1850.

¹The proviso omitted by the Devolution Act, 1920 (XXXVIII of 1920).

of 1912.]

(Secs. 5-9.)

5. For the purpose of facilitating the application to the territory, or any part thereof, mentioned in Schedule A, [*Schedule B or Schedule C*] of any enactment passed before the commencement of this Act, or of any notification, order, scheme, rule, form or by-law made under any such enactment,—

Powers to Courts and Provincial Governments for facilitating application of enactments.

(a) any Court may, subject to the other provisions of this Act, construe the enactment, notification, order, scheme, rule, form or by-law with such alterations, not affecting the substance, as may be necessary or proper to adopt it to the matter before the Court; and

(b) the ¹[Provincial Government] may, by notification in the ²[*Official Gazette*], direct by what officer any authority or power shall be exercisable; and any such notification shall have effect as if enacted in this Act.

6. Nothing in this Act shall affect any proceeding which, at the commencement thereof, is pending in or in respect of any of the territory mentioned in Schedule A, [*Schedule B or Schedule C*]; and every such proceeding shall be continued as if this Act had not been passed.

Pending Proceedings.

7, 8. *Rep. by the Repealing Act, 1938 (I of 1938).*

9. References in this Act, by whatever form of words, to Indian laws in force immediately before the commencement of this Act shall, after the commencement of Part III of the Government of India Act, 1935, be construed as references to those laws as adapted and modified under section 293 of that Act.

Application to adaptations and modifications made under s. 293 of the Government of India Act, 1935.

26 Geo.
V, Ch. 2.

¹These words were substituted for the words "Local Government" by paragraph 4 (I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "local official Gazette", *ibid.*

³Section 9 was inserted by the 1st Sch., *ibid*

(Schedules A. B.)

SCHEDULE A.

(See sections 3, 5 and 6.)

THE PRESIDENCY OF FORT WILLIAM IN BENGAL.

Part I.

The Chittagong Division, comprising the districts of Chittagong, the Chittagong Hill-Tracts, Noakhali and Tippera;

the Dacca Division, comprising the districts of Bakerganj, Dacca, Faridpur and Mymensingh;

the Rajshahi Division, comprising the districts of Bogra, Dinajpur, Jalpaiguri, Malda, Pabna, Rajshahi and Rangpur.

Part II.

The Burdwan Division, comprising the districts of Bankura, Birbhum, Burdwan, Hooghly, Howrah and Midnapur;

the Presidency Division, comprising the town of Calcutta and the districts of Jessore, Khulna, Murshidabad, Nadia and the 24-Parganas;

The district of Darjeeling.¹

[SCHEDULE B.]

The Province of Bihar and Orissa.

The districts of Bhagalpur, Monghyr, Purnea and the Sonthal Parganas, in the Bhagalpur Division;

the Patna Division, comprising the districts of Gaya, Patna and Shahabad;

the Tirhut Division, comprising the districts of Champaran, Darbhanga, Muzaffarpur and Saran;

the Chota Nagpur Division, comprising the districts of Hazaribagh, Manbhum, Palamau, Ranchi and Singhbhum; and

the Orissan Division, comprising the districts of Angul, Balasore, Cuttack, Puri and Sambalpur.]

¹The district of Darjeeling has been transferred to the Rajshahi Division—see Notification No. 410, dated the 1st April, 1912, in the Gazette of India, Extraordinary of that date.

of 1912.]

(Schs. C. D.)

[SCHEDULE C.

The Province of Assam.

The Assam Valley Districts Division, comprising the districts of Darrang, Garo Hills, Goalpara, Kamrup, Lakhimpur, Nowgong and Sibsagar; and

the Surma Valley and Hill Districts Division, comprising the districts of Cachar, Khasi and Jaintia Hills, Lushai Hills, Naga Hills and Sylhet.]

SCHEDULE D.

(See section 3.)

Part I.—Construction of enactments, etc., in force in the territory mentioned in Schedule A (the Presidency of Fort William in Bengal).

References.	Constructions.
1	2
1. The ¹ [Local or Provincial Government] of Bengal.	} The ² [Provincial Government] of * * *
2. The ¹ [Local or Provincial Government] of Eastern Bengal and Assam.	
3. The Board of Revenue for Eastern Bengal and Assam.	} The Board of Revenue for Bengal.
** * * *	
6. All officers and official bodies not mentioned in the foregoing clauses 2 to 5 (except the Treasurer of Charitable Endowments) whose authority extended, immediately before the commencement of this Act, over the Province of Eastern Bengal and Assam generally, inclusive of the territory mentioned in Part I of Schedule A.	(a) The respective officers and official bodies who immediately before the commencement of this Act exercised similar functions in the Province of Bengal; or (b) such other officers or official bodies, respectively, as the ³ [Provincial Government] of * * * Bengal may, by notification in the ⁴ [Official Gazette], direct.

¹These words were substituted for the words "Local Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "Governor in Council" by paragraph 4(1), *ibid*.

³The words "Fort William in" were omitted by the 1st Sch., *ibid*.

⁴Items Nos. 4, 5, 11, 12, 22 and 23 were omitted, *ibid*.

⁵These words were substituted for the words "local official Gazette" by paragraph 4(1), *ibid*.

(Sch. D.)

SCHEDULE D—*contd.*

[Part II.—Construction of enactments, etc., in force in the territory mentioned in Schedule B (the Province of Bihar and Orissa).]

References. 1	Constructions. 2
7. The local official Gazette (English or Vernacular, as the case may be) of the Government of Eastern Bengal and Assam.	The ¹ [Official Gazette] (English or Vernacular ² , as the case may be) of the Government of Bengal.
8. The ³ [Local or Provincial Government] Bengal.	} The ⁴ [Provincial Government] of Bihar and Orissa.
9. The ³ [Local or Provincial Government] of the Central Provinces.	
10. The Board of Revenue for Bengal .. * * * *	} The Board of Revenue for Bihar and Orissa.
13. The Court of Wards of the Central Provinces.	
14. The Superintendent of Government Wards in the Central Provinces.	
15. The Judicial Commissioner of the Central Provinces.	The High Court of Judicature ⁵ [in Calcutta].
16. All officers and official bodies not mentioned in the foregoing clauses 8 to 15 (except the Treasurer of Charitable Endowments) whose authority extended, immediately before the commencement of this Act, over the Province of Bengal generally, inclusive of the territory mentioned in Schedule B.	Such officers or official bodies, respectively, as the ⁴ [Provincial Government] may, by notification in the ¹ [Official Gazette], direct.
17. The local official Gazette (English or Vernacular, as the case may be) of the Government of Bengal or the Chief Commissionership of the Central Provinces.	The ¹ [Official Gazette] (English or Vernacular, as the case may be) of the Government of Bihar and Orissa.]

¹See foot-note 5 on p. 867, *ante*.

²The Vernacular Gazettes of the Government of Bengal have been discontinued since the 1st April, 1912.

³See foot-note 1 on p. 867, *ante*.

⁴These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵See foot-note 4 on p. 867, *ante*.

These words were substituted for the words "at Fort William in Bengal" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1912.]

(Sch. E.)

SCHEDULE D—*conold.*

[Part III.—Construction of enactments, etc., in force in the territory mentioned in Schedule C (the Province of Assam)—*conold.*

References.	Constructions.
1	2
18. The ¹ [Local or Provincial Government] of Bengal.	} The ² [Provincial Government] of Assam.
19. The ¹ [Local or Provincial Government] of Eastern Bengal and Assam.	
20. The Board of Revenue for Bengal ..	
21. The Board of Revenue for Eastern Bengal and Assam.	
2* * * * *	
24. All officers and official bodies not mentioned in the foregoing clauses 18 to 23 (except the Treasurer of Charitable Endowments) whose authority extended, immediately before the commencement of this Act over the Province of Eastern Bengal and Assam generally, inclusive of the territory mentioned in Schedule C.	Such officers or official bodies, respectively, as the ¹ [Provincial Government] of Assam may, by notification in the ⁴ [Official Gazette], direct.
25. The Chief Commissionership of Assam	The territory mentioned in Schedule C.
26. The local official Gazette (English or Vernacular, as the case may be) of the Government of Bengal or the Government of Eastern Bengal and Assam.	The ⁴ [Official Gazette] (English or Vernacular, as the case may be) of the ³ Chief Commissionership of Assam.

SCHEDULE E.

Rep. by the Repealing Act, 1938 (I of 1938).

¹See foot-note 1 on p. 867, *ante*.

²See foot-note 4 on p. 867, *ante*.

³These words were substituted for the words "Chief Commissioner" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴See foot-note 5 on p. 867, *ante*.

⁵The words "Chief Commissionership" are now to be construed as the Provincial Government—See paragraph 7 of the Government of India (Adaptation of Indian Laws) Order, 1937.

Act XV of 1919.

(The Calcutta High Court (Jurisdictional Limits) Act, 1919.)¹

[17th September 1919.]

An Act to declare and prescribe the limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal.

WHEREAS clause 11 of the Letters Patent for the High Court of Judicature at Fort William in Bengal, dated the 28th December, 1865, provides that the said High Court shall have and exercise ordinary original civil jurisdiction within such local limits as may from time to time be declared and prescribed by any law made by competent legislative authority for India;

AND WHEREAS it is expedient so to declare and prescribe the local limits of the ordinary original civil jurisdiction of the said High Court;

It is hereby enacted as follows:—

1. This Act may be called the Calcutta High Court (Jurisdictional Limits) Act, 1919. Short title.

2. The ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal shall be exercised within the limits set out in the schedule: Limits of ordinary original civil jurisdiction.

Provided that nothing in this Act shall affect any suit or other legal proceeding pending in any Court at the date of the commencement of this Act.

THE SCHEDULE.

(See section 2.)

1. The limits within which the ordinary original civil jurisdiction of the High Court shall be exercised are as follows:—

North.—A line commencing on the western side of the river Hooghly at a point where the straight line joining reference pillar No. I (in a compound on the river side of the Ghusri Cotton Mill, Howrah) and

¹LEGISLATIVE PAPERS.—For the Statement of Objects and Reasons see Gazette of India, 1919, Pt. V, p. 74; and for Proceedings in Council, see, *ibid*, 1919, Pt. VI, pp. 876 and 877 and pp. 1101 and 1102.

(The Schedule.)

reference pillar No. II (near the south-western end of Chitpur Toll Bridge) meets the western water-line of the river Hooghly, and thence along the said line to the point where it meets the eastern water-line of the river Hooghly near the south bank of the opening of Circular Canal; thence along the water-line of the south bank of Circular Canal passing under the Chitpur Toll Bridge, the Chitpur or Baghbazar Bridge to boundary pillar A on the eastern side of the southern pile of Barrackpore Bridge.

East.—A line commencing from the said boundary pillar A following the eastern edge of the steps of the bridge to a point near the south-eastern corner of the immediate approach to the bridge marked by reference pillar III, which is on the boundary; thence by a straight line to boundary pillar B on the south-eastern corner of the junction of Cornwallis Street and Galif Street (now marked with a Public Works Department stone); thence along the eastern side and the eastern side of the eastern pavement of Cornwallis Street in a series of regular links joining points marked by posts 1-3 to boundary pillar C at the north corner of the junction of Shambazar Street with Cornwallis Street; thence by a straight line to boundary pillar D on the solid south corner of the said junction; thence in an approximately straight line along the solid eastern side of Upper Circular Road marked by posts 4-9; thence eastward following the corner round to boundary pillar E on the north corner of the junction of the unnamed road (which runs into Jadu Nath Mitra Lane) with Upper Circular Road; and thence by a straight line to boundary pillar F at the solid south corner of the junction of Jadu Nath Mitra Lane with Upper Circular Road; thence by posts 10-13 to boundary pillar G on the solid south corner of the junction of Ultadingi Road with Upper Circular Road; thence along the solid south side of Ultadingi Road in a series of continuous and approximately straight lines joining points marked by posts 14-16 to boundary pillar H at the solid western corner of the junction of Ultadangi Road and Gauribere Lane; thence by the solid western side of Gauribere Lane marked by posts 17-21; thence by a straight line crossing the road diagonally to boundary pillar I on the solid south-eastern corner of the junction of Gauribere Lane and Ultadingi Junction Lane; thence along the solid eastern side of Ultadingi Junction Lane marked by posts 22-24 to boundary pillar J on the solid eastern corner of the junction of Ultadingi Junction Lane with Halsibagan Road; thence by a straight line to post 25

of 1919.]

(The Schedule.)

• at the solid western corner of the said junction; thence along the solid north side of Halsibagan Road marked by post 26 to boundary pillar K on the north side of Halsibagan Road directly opposite the solid eastern side of Upper Circular Road south of it; thence by a straight line to post 27 at the solid south corner of the junction of Halsibagan Road with Upper Circular Road; thence by the solid eastern side of Upper Circular Road marked by posts 28-34 to post 35; thence turning east to boundary pillar L on the north side of Maniktola Road; thence by a straight line to post 36 at the south corner of the junction of Maniktola Road with Upper Circular Road at the north-western corner of the garden of Kali Pada Barik; thence along the eastern side of the lane on the eastern side of the raised platform road and marked by posts 37-49 to boundary pillar M at the solid north corner of the junction of Gas Street and Upper Circular Road; thence by a straight line to boundary pillar N at the solid south corner of the said junction; thence keeping again to the eastern side of the lane on the eastern side of the raised platform road along a line marked by posts 50-61 excluding the recently made Ladies' Park to boundary pillar O near the north pillar of the north entrance to North Station, Sealdah; thence by a straight line to boundary pillar P at the south corner of that entrance; thence by the comparatively straight lines from pillar to pillar connecting boundary pillars, P, Q, R, S, and T adjacent to the pillars forming the corners of the various approaches to Sealdah Station; thence along the solid eastern side of Lower Circular Road marked by posts 62-64 to pillar 65; thence turning west to boundary pillar U at the north-western corner of the out-patients' department of the Campbell Hospital; thence by a straight line marked by posts 66-68 to boundary pillar V on the corner of the platform to the right of the north entrance to the Calcutta Corporation Central Stores; thence by post 69 turning east to post 70; thence by posts 71-76, boundary pillars W and X at the solid corners of the southern junction of Police Hospital Road with Lower Circular Road; thence by posts 77-80, to boundary pillars Y and Z on the solid corners of the junction of Beniapukur Lane with Lower Circular Road, by posts 81-86 to boundary pillars A₁ and B₁, at the solid corners of the junction of Nona-pukur or Bijli Road and Lower Circular Road, posts 87, 88, to boundary pillar C₁, near the south-western corner of the Circular Road burial ground; thence by a straight line to boundary pillar D₁, on the other side of the tramway lines; thence post 89 eastward to post 90; thence to boundary pillars E₁, and F₁, at the solid

(The Schedule.)

corners of the junction of Karaya Bazar Road and Lower Circular Road, posts 91, 92 to boundary pillar G₁, opposite to Theatre Road, posts 93, 94, to boundary pillar H₁, a few feet south of the point directly opposite the junction of Auckland Place and Lower Circular Road, and following the curve of the road by posts 95 and 96 to reference pillar IV (which is on the boundary) on the eastern side of the junction of Beck Bagan Lane with Lower Circular Road.

South.—A line commencing from the said reference pillar IV in a straight line to boundary pillar I₁, on the western corner of the junction of Beck Bagan Lane with Lower Circular Road; thence along the solid south side of Lower Circular Road to boundary pillar J₁, and K₁, at the solid corners of the junction of Ballyganj Circular Road and Lower Circular Road; thence by the solid south side of Lower Circular Road marked by posts 97, 98, boundary pillars L₁, M₁ at the solid corners of the junction of Lansdowne Road with Lower Circular Road, post 99 southward to post 100 westward to post 101, northward to post 102 and westward to post 103, boundary pillars N₁ and O₁ at the solid corners of the junction of Woodburn Road with Lower Circular Road, posts 104, 105, boundary Pillars P₁ and Q₁ at the solid corners of the junction of Lee Road with Lower Circular Road; thence by the straight line links but broken boundary line formed by posts 106-113, to boundary pillar R₁ on the south-eastern corner of the junction of Chowringhee with Lower Circular Road; thence by an oblique straight line to boundary pillar S₁ on the south-western corner of the said junction (near a stone marked F. W. B.-26); thence by a line representing the present limits of the holdings on the south of Circular Road and marked by posts 114-116, boundary pillars T₁ and U₁ at the solid corners of the junction of Haris Chandra Mukharji Road and Lower Circular Road, posts 117-121; thence to boundary pillar V₁, near the north corner of the junction of Bhowanipore Road and Lower Circular Road; thence following the curve of the corner and the eastern side of Bhowanipore Road and the surplus lands attached thereto by a series of straight line links joining points marked by posts 122-124, boundary pillars W₁, and X₁, at the junction of Shambhunath Pandit Street and Bhowanipore Road, posts 125-128 turning eastward to boundary pillar Y₁ on the north side of Sankaripara Road, posts 129, 130 to boundary pillars Z₁ and A₂ across the entrance of Ketrapati Road into Bhowanipore Road; thence by posts 131, 132 to boundary pillar B₁ on the north-eastern side of Alipore Bridge; thence along a straight

of 1919.]

(The Schedule.)

line joining the said boundary pillar B₂ with subsidiary reference pillar VII on the south-eastern side of the said bridge to a point where that straight line meets the water-line of Tolly's Nala; thence along the water-line of Tolly's Nala to the north-eastern corner of the District Magistrate's compound, near which is boundary pillar C₂; thence along the irregular northern boundary of the Magistrate's compound marked by posts 133-141 to boundary pillar D₂ at the south corner of the entrance to the Civil Surgeon's house from Thackeray Road; thence southward along the western boundary of the Magistrate's compound by posts 142-145 and along the southern boundary of that compound marked by posts 147, 148 to boundary pillar E₂ on the bank of Tolly's Nala; thence continuing the straight line from post 148 to boundary pillar E₂ till it meets the water-line of Tolly's Nala; thence along the water-line of Tolly's Nala to a point in a direct line with the north side of the masonry drain running outside the Jail Garden near which is boundary pillar F₂; thence along the north side of the said drain in a straight line across Motee Jheel to post 149 against the boundary of the compound of the Magistrate's Court; thence northward along that boundary to post 150 and westward to post 151 and northward again along the boundary of the Army Clothing Agency to post 152; thence westward on the south side of the lane to boundary pillar G₂ at the north-western corner of the Police Hospital compound; thence along the wall of the Alipore Central Jail facing Belvedere Road and marked by pillars 153-157 to the north-western corner of the junction of Belvedere Road and Jail Lane following the corner eastward to post 158 and continuing along the south side of Jail Lane to post 159; thence by a straight line to boundary pillar H₂ at the acute corner of the junction of Reformatory Street with Jail Lane; thence to boundary pillar I₂ on the north-western side of Alipore Bridge; thence to boundary pillar J₂ on the north-eastern side of the said bridge; thence by the solid south-western and western side of Bhowanipore Road marked by posts 160-167; thence following the western corner of the junction of Bhowanipore Road and Lower Circular Road to boundary pillar K₂; thence along the solid south side of Lower Circular Road following the sweep of the railings and marked by posts 168-172 to boundary pillar L₂ on Lower Circular Road and east of its junction with Belvedere Road; thence following the natural bends of the corner marked by posts 173 and 174 to boundary pillar M₂ on the eastern side of Belvedere Road; thence along the eastern side of Belvedere Road now indicated by wooden railings and

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marked by post 175 to boundary pillar N₂ on the north-eastern side of Zeerut Bridge; thence along the railings of the footpath on the eastern side of the bridge to boundary pillar O₂ near its south-eastern end; thence along a bent line following the shape of the bridge and marked by posts 176, 177 to post 178 on the eastern side of the south extremity of the immediate approach to the bridge; thence by a straight line to boundary pillar P₂ on the western side of the said extremity; thence turning north along the railings of the footpath on the western side of the bridge; till it meets the water-line underneath the bridge; thence along the water-line of the south or Alipore bank of Tolly's Nala trending northwards under Hastings Bridge, to a point where a straight line joining reference pillar V (near the south-western end of Hastings Bridge), to reference pillar VI (on the Howrah side of the river in the line with the northern wall of the Bengal-Nagpur Railway Goods Yard) meets the water-line of the south bank of the bend of the Hooghly River, near the western side of the opening of Tolly's Nala; thence continuing the said straight line till that said straight line meets the water-line of the Howrah side of the river Hooghly.

West.—A line commencing from the point last defined along the water-line of the Howrah side of the River Hooghly to the western extremity of the northern boundary.

2. (a) When the expression "water-line" is used in this schedule all *pucca ghats* and other objects permanently attached to the bank and in contact with the water shall be deemed to appertain to the area to which the land on that bank appertains, and the water in contact with such objects shall be deemed to appertain to the other side of the boundary. In the places in the Schedule where the boundary is thus described the boundary line shall be the moving edge of the water wherever it may be at any time. In the case of bridges, however, the supporting pile in contact with the bank only shall be deemed to be permanently attached to the bank and the boundary line across the bridge to be immediately above the water-line so described.

(b) The expression "solid side" or "solid corner" means the line or spot marked out by solid objects, such as a *pucca* wall or the face of a house, the way-side lands and pavements thus being all included in the adjacent road, street or lane.

Act XVI of 1920.

(The Jagannath College Act, 1920.)¹

(20th March 1920.)

An Act to transfer the Jagannath College at Dacca from Trustees to the Governor of Bengal in Council.

WHEREAS by a deed of trust dated the first day of March, 1907 (hereinafter referred to as the principal deed), Kishori Lal Ray Chaudhuri, a zemindar of Dacca, transferred the institution at Dacca known as the Jagannath College, together with certain leasehold land, buildings and moveable property therein particularly referred to and described to Rai Chandra Kumar Dutt Bahadur, Ananda Chandra Ray and himself, and appointed them and himself as trustees, for the purposes, *inter alia*, of maintaining and managing the said institution in the manner and upon the terms set out in the principal deed:

AND WHEREAS the said Kishori Lal Ray Chaudhuri died on the third day of June, 1909;

AND WHEREAS by a further deed of trust, dated the twenty-fourth day of August, 1909, the said Rai Chandra Kumar Dutt Bahadur and Ananda Chandra Ray as the then surviving trustees under the principal deed in pursuance of the authority therein contained, appointed Jasoda Lal Ray Chaudhuri, Kumar Ranendra Narayan Chaudhuri and Dinesh Chandra Ray Chaudhuri to be trustees jointly with them the said Rai Chandra Kumar Dutt Bahadur and Ananda Chandra Ray (all of which persons collectively are hereinafter referred to as the trustees), for the purposes aforesaid, and transferred to the trustees, in addition to the said institution and the properties hereinbefore referred to certain other land therein particularly referred to and described;

AND WHEREAS it is expedient, in connection with the incorporation of the University of Dacca, to put an end to the said trusts and to vest the said institution and properties in the Governor of Bengal in Council;

It is hereby enacted as follows:—

1. (1) This Act may be called the Jagannath College Act, 1920.

Short title
and
commence-
ment.

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Gazette of India, 1920, Pt. V., p. 96 and for proceedings in Council, see *ibid*, 1920, pp. 732 and 733 and pp. 853-855.

(Secs. 2, 3.)

(2) It shall come into force on such date as the¹[Central Government] may, by notification in the²[*Official Gazette*], direct.

Transfer of
Jagannath
College with
certain pro-
perties to the
Crown.

2. (1) From the commencement of this Act, the institution heretofore known as the Jagannath College at Dacca, together with the leasehold and other land described in Parts I and II of the Schedule and all buildings and other erections standing or being thereon, and all moveable properties, funds, monies, rights and powers which, immediately before the commencement of this Act, were vested in or held by the trustees as such for the purposes of the principal deed, shall be transferred to, and shall be vested in and held by,³[the Crown, for the purposes of the Province of Bengal.]

(2) All debts and liabilities of the Jagannath College shall, from the commencement of this Act, be transferred to the⁴[Provincial Government], which shall thereafter discharge and satisfy all such debts and liabilities out of the aforesaid properties.

Indemnities.

3. (1) No suit shall be instituted against the⁵[Crown] or against any officer⁶[of the Crown] in respect of anything done or purporting to be done under this Act, or in respect of any alleged neglect or omission to perform any duty devolving upon the⁷[Provincial Government] under this Act, or in respect of the exercise of, or failure to exercise, any power conferred on it by this Act.

(2) No suit shall lie against the trustees, or any of them, in respect of anything done or purporting to be done under this Act or for the purpose of giving effect to the provisions of this Act.

¹These words were substituted for the words "Governor General in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "Gazette of India", *ibid.*

³These words were substituted for the words "the Governor of Bengal in Council (hereinafter referred to as the Local Government)" by the 1st Sch., *ibid.*

⁴These words were substituted for the words "Local Government" by paragraph 4(1), *ibid.*

⁵This word was substituted for the words "Local Government" by the 1st Sch., *ibid.*

⁶These words were substituted for the words "of Government", *ibid.*

of 1920.]

THE SCHEDULE.

(See section 2.)

PART I.

A piece of valid *lakheraj* land in mahallah Patuatuly within the city of Dacca and under the jurisdiction of the town police-station, bounded and butted on the south by the public road, now named as Lyall Road, and by the buildings belonging to the late Gouranga Hari De and to the late Ramsunder Basak, which formerly belonged to Mr. J. P. Wise and to Babu Ruplal Das and to Kunja Behari Gope, which formerly belonged to Durgamony and to the late Govinda Shaha. And on the east by the premises belonging to the East Bengal Brahmo Somaj and by the western wall of the premises belonging to Jagat Sundari and by a portion of the western wall of the premises occupied by the Pogose School. And on the north by the southern wall of the premises occupied by the said Pogose School and by the building belonging to Babus Ruplal and Raghu Nath Das and others. And on the west by a portion of the lane known as Kaviraja's Lane and by the premises belonging to Babu Kailash Chandra Das, which formerly belonged to the late Broja Chandra Mazumdar and by the premises now belonging to Rajani Kanta Gupta and by the premises belonging to Gourang Govinda Shaha, together with and containing (a) one two-storied building facing towards the south and running from east to west, and (b) one one-storied building to the north-east of the said two-storied building and also facing towards the south and running from east to west which two buildings are now mainly used by the aforesaid school, and (c) a walled enclosure, used as a privy by students, lying in the corner between the premises of Babus Ruplal and Raghu Nath and others and the aforesaid western wall of the said Pogose School. All these buildings are standing upon the said land. The premises is numbered now as 59 in the register of the Dacca Municipality.

This property is held subject to the terms of a registered lease dated the 9th day of February, 1887, between Rebati Mohan Basak and others of the one part and Kishori Lal Ray Chaudhuri of the other part.

PART II.

A piece of valid *lakheraj* land in the city of Dacca, within the jurisdiction of the sadar police-station and

(The Schedule.)

Sub-Registry office, under thak No. 216, being holding No. 157 of the Dacca Municipality, bounded on the immediate south by the lands of Rash Behari Basak, Lal Mohan Basak and others and the Brahmo Somaj, on the immediate north by the premises of the Pogose School and the lane leading to the Small Cause Court and Pogose School, on the immediate west by the leasehold house of Ram Charan and Krishna Charan Basak, *i.e.*, by the present premises of the Jagannath College, and on the immediate east by the public road containing open lands with masonry walls and sheds, etc.

Act XVIII of 1920.

(The Dacca University Act, 1920.)

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Act XVIII of 1920.

(The Dacca University Act, 1920.)¹

(23rd March 1920.)

An Act to establish and incorporate a unitary teaching and residential University at Dacca.

WHEREAS it is expedient to establish and incorporate a unitary teaching and residential University at Dacca; It is hereby enacted as follows:—

1. (1) This Act may be called the Dacca University Act, 1920.

Short title
and com-
encement.

(2) It shall, save as otherwise expressly provided herein, come into force on such date as the ²[Central Government] may, by notification in the ³[*Official Gazette*] direct.

2. In this Act, and in all Statutes made hereunder, unless there is anything repugnant in the subject or context,—

Definitions.

(a) “Hall” means a unit of residence for students of the University provided or maintained by the University;

(b) “Hostel” means a unit of residence for students of the University provided otherwise than by the University, and not maintained by the University but approved and licensed by the University in accordance with the provisions of this Act;

‘[* * * * *]

(d) “Provost” means the head of a Hall;

(e) “registered graduates” means graduates registered under the provisions of this Act;

(f) “Statutes,” “Ordinances” and “Regulations” mean, respectively, the Statutes, Ordinances and Regulations of the University for the time being in force;

¹Legislative papers.—For Statement of Objects and Reasons, see Gazette of India, 1919, Pt. V, pp. 111 and 112; for Report of the Select Committee, see *ibid*, 1920, Pt. V, pp. 99-103; and for proceedings in Council, see *ibid*, 1919, Pt. VI, pp. 961-976 and *ibid*, 1920 pp. 761 and 855-915.

²These words were substituted for the words “Governor General in Council” by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words “Gazette of India”, *ibid*.

⁴Clause (c) was omitted by the 1st Sch., *ibid*.

(Secs. 3, 4.)

- (g) "teachers" includes Professors, Readers¹[Lecturers and Assistant Lecturers];
- (h) "University" means the University of Dacca; and
- (i) "Warden" means the head of a Hostel.

*The University.***The University.**

3. (1) The first Chancellor and Vice-Chancellor of the University and the first members of the Court, the Executive Council and the Academic Council and all persons who may hereafter become such officers or members, so long as they continue to hold such office or membership, are hereby constituted a body corporate by the name of the University of Dacca.

(2) The University shall have perpetual succession and a Common Seal, and shall sue and be sued by the said name.

Powers of the University.

4. The University shall have the following powers, namely:—

(1) to provide for instruction in such branches of learning as the University may think fit, and to make provision for research and for the advancement and dissemination of knowledge.

(2) to hold examinations and to grant and confer degrees and other academic distinctions to and on persons who—

(a) shall have pursued a course of study²[provided by] the University, or

(b) are teachers in educational institutions,

under conditions laid down in the Ordinances and Regulations, and shall have passed the examinations of the University, under like conditions,

(3) to confer honorary degrees or other distinctions on approved persons in the manner laid down in the Statutes,

(4) to grant such diplomas to and to provide such lectures and instruction for persons, not being³[students] of the University, as the University may determine.

¹These words were substituted for the words "and Lecturers" by s. 2 of the Dacca University (Amendment) Act, 1928 (Ben. Act II of 1928).

²These words were substituted for the word "in" by s. 3 (1), *ibid.*

³This word was substituted for the word "members" by s. 3 (2), *ibid.*

of 1920.]

(*Sec. 5.*)

(5) to co-operate with other Universities and authorities in such manner and for such purposes as the University may determine,

(6) to institute Professorships, Readerships, Lectureships and any other teaching posts required by the University, and to appoint persons to such Professorships, Readerships, Lectureships and posts,

(7) to institute and award Fellowships, Scholarships, Exhibitions, and Prizes in accordance with the Statutes and the Regulations,

(8) to institute and maintain Halls for the residence of students of the University, and to approve and license Hostels maintained by other persons for the residence of such students,

(9) to demand and receive such fees as may be prescribed in the Ordinances,

(10) to supervise and control the residence and discipline of students of the University, and to make arrangements for promoting their health, and

(11) to do all such other acts and things, whether incidental to the powers aforesaid or not, as may be requisite in order to further the objects of the University as a teaching and examining body, and to cultivate and promote arts, science and other branches of learning.

5. The University shall be open to all persons of either sex and of whatever race, creed or class, and it shall not be lawful for the University to adopt or impose on any person any test whatsoever of religious belief or profession in order to entitle him to be admitted thereto as a teacher or student, or to hold any office therein, or to graduate thereat, or to enjoy or exercise any privilege thereof, except where such test is specially prescribed by the Statutes, or, in respect of any particular benefaction accepted by the University where such test is made a condition thereof, by any testamentary or other instrument creating such benefaction :

**University
open to all
classes, castes
and creeds.**

Provided that nothing in this section shall be deemed to prevent religious instruction being given in the manner prescribed by the Ordinances to those not unwilling to receive it by persons (whether teachers of the University or not) approved for that purpose by the Executive Council.

(Sec. 6.)

**Teaching of
the University.**

6. (1) All recognised teaching in connection with the University courses shall be conducted by the University, and shall include lecturing ¹[work in the laboratories or workshops] and other teaching conducted ²*** by the Professors, Readers, Lecturers and other teachers thereof ³[in the manner provided by the Ordinances].

(2) The authorities responsible for organising such teaching shall be prescribed by the Statutes.

(3) The courses and curricula shall be prescribed by the Ordinances and the Regulations.

⁴(4) Recognised teaching shall be supplemented by tutorial instruction given in accordance with the conditions provided by the Ordinances and Regulations.

(5) It shall not be lawful for the University to conduct courses or maintain classes for the purpose of preparing students for admission to the University.

*The Visitor.***Visitation.**

⁵7. (1) The Provincial Government shall have the right to cause an inspection to be made by such person or persons as it may direct of the University, its buildings, laboratories and equipment, and of any institutions associated with the University, and also of the Examinations, teaching and other work conducted or done by the University, and to cause an inquiry to be made in like manner in respect of any matter connected with the University.

The Provincial Government shall in every case give notice to the University of its intention to cause an inspection or inquiry to be made, and the University shall be entitled to be represented thereat.

(2) The Provincial Government shall communicate to the Executive Council its views with reference to the results of any such inspection or inquiry, and shall, after

¹These words were substituted for the words "laboratory work" by s. 4 (1) (a) of the Dacca University (Amendment) Act, 1928 (Ben. Act II of 1928).

²The words "in the University" were omitted by s. 4(1)(b), *ibid.*

³These words were substituted for the words "in accordance with any syllabus prescribed by the Regulations" by s. 4(1)(c), *ibid.*

⁴Sub-section (4) was substituted for the original sub-section by s. 4(2), *ibid.*

⁵Section 7 was substituted for the original section by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1920.]

(Secs. 8, 9.)

ascertaining the opinion of the Executive Council thereon, advise the University upon the action to be taken.

(3) The Executive Council shall report to the Provincial Government the action, if any, which is proposed to be taken or has been taken upon the results of the inspection or inquiry.

(4) Where the Executive Council does not, within a reasonable time, take action to the satisfaction of the Provincial Government, the Governor, exercising his individual judgment, may, after considering any explanation furnished or representation made by the Executive Council, issue such directions as he may, exercising his individual judgment, think fit, and the Executive Council shall comply with those directions.

Officers of the University.

8. The following shall be the officers of the University :—

Officers of the University.

- (I) The Chancellor,
- (II) The Vice-Chancellor,
- (III) The Treasurer,
- (IV) The Provosts.
- (V) The Registrar,
- (VI) The Deans of the Faculties, and
- (VII) Such other officers as may be declared by the

Statutes to be officers of the University.

9. (1) The Chancellor shall be the Governor of Bengal. He shall by virtue of his office be the head of the University and the President of the Court, and shall when present preside at meetings of the Court and at any Convocation of the University.

The Chancellor.

(2) The Chancellor shall have such powers as may be conferred on him by this Act or the Statutes.

(3) Every proposal for the conferment of an honorary degree shall be subject to the confirmation of the Chancellor.

(4) The Chancellor shall, where committees of selection for Professorships and Readerships are constituted in British India, appoint in the manner prescribed by the Statutes one or more members of every such committee.

(Secs. 10, 11.)

**The
Vice-Chancellor,**

10. (1) The Vice-Chancellor shall be appointed by the Chancellor after consideration of the recommendations of the Executive Council, and shall hold office for such term and subject to such conditions as may be prescribed by the Statutes.

(2) Where any temporary vacancy in the office of the Vice-Chancellor occurs by reason of leave, illness or other cause, the Executive Council shall forthwith report the same to the Chancellor, who shall make such arrangements for carrying on the office of the Vice-Chancellor as he may think fit.

**Powers and
duties of the
Vice-Chancellor,**

11. (1) The Vice-Chancellor shall be a whole-time officer of the University. He shall be the principal executive and academic officer of the University, and shall, in the absence of the Chancellor, preside at meetings of the Court and at any Convocation of the University. He shall be an *ex-officio* member and Chairman of the Executive Council and of the Academic Council, and shall be entitled to be present and to speak at any meeting of any authority or other body of the University, but shall not be entitled to vote thereat, unless he is a member of the authority or body concerned.

(2) It shall be the duty of the Vice-Chancellor to see that this Act, the Statutes and the Ordinances are faithfully observed, and he shall have all powers necessary for this purpose.

(3) The Vice-Chancellor shall have power to convene meetings of the Court, the Executive Council and the Academic Council.

(4) In any emergency which, in the opinion of the Vice-Chancellor, requires that immediate action should be taken, the Vice-Chancellor shall take such action as he deems necessary, and shall within seven days thereafter report his action to the officer, authority or other body who or which in the ordinary course would have dealt with the matter.

(5) The Vice-Chancellor shall give effect to the orders of the Executive Council regarding the appointment, dismissal and suspension of the officers and teachers of the University, and shall exercise general control over the members of the University. He shall be responsible for the discipline of the University in accordance with this Act, the Statutes and the Ordinances.

(6) The Vice-Chancellor shall exercise such other powers as may be prescribed by the Statutes and the Ordinances.

of 1920.]

(Secs. 12—15.)

12. (1) The Treasurer shall be appointed by the Chancellor upon such conditions and for such period, and shall receive such remuneration (if any) from the funds of the University, as the Chancellor shall deem fit. The Treasurer.

(2) Where any temporary vacancy in the office of the Treasurer occurs by reason of leave, illness or other cause, the Executive Council shall forthwith report the same to the Chancellor, who shall make such arrangements for carrying on the office of the Treasurer as he may think fit.

(3) The Treasurer shall exercise general supervision over the funds of the University, and shall advise in regard to its financial policy.

(4) He shall be an *ex-officio* member of the Executive Council, and shall, subject to the control of the Executive Council, manage the property and investments of the University. He shall be responsible for the presentation of the annual estimates and statement of accounts.

(5) Subject to the powers of the Executive Council, he shall be responsible for seeing that all monies are expended on the purpose for which they are granted or allotted.

(6) All contracts shall be signed by the Treasurer on behalf of the University.

(7) He shall exercise such other powers as may be prescribed by the Statutes and the Ordinances.

13. The Registrar shall act as Secretary of the Court and the Executive Council. He shall maintain a register of registered graduates in accordance with the Statutes, and shall exercise such other powers as may be prescribed by the Statutes and the Ordinances. The Registrar.

14. The powers of officers of the University other than the Chancellor, the Vice-Chancellor, the Treasurer and the Registrar, shall be prescribed by the Statutes and the Ordinances. Other officers.

Authorities of the University.

15. The following shall be the authorities of the University:— Authorities of the University.

- I. The Court,
- II. The Executive Council,
- III. The Academic Council,

(Sec. 16.)

IV. The Faculties, and

V. Such other authorities as may be declared by the Statutes to be authorities of the University.

The Court.

16. (1) The Court shall consist of the following persons, namely:—

Class I.—Ex-officio members.

- (i) The Chancellor,
- (ii) The Vice-Chancellor,
- (iii) The Treasurer,
- (iv) The Registrar,
- (v) The Provosts and Wardens,
- (vi) The Professors and Readers, and
- (vii) Such other *ex-officio* members as may be prescribed by the Statutes.

Class II.—Other members.

- (viii) Graduates of the University elected by the registered graduates from among their own body,
- (ix) five Lecturers elected by the teachers of the University,
- (x) persons appointed by the Chancellor ¹[including persons appointed to represent Assam]

* * * * *
- (xi) ten persons appointed by associations or other bodies approved in this behalf by the Chancellor, and
- (xii) persons (if any) appointed by the Chancellor to be life-members on the ground that they have rendered great services to education or have made substantial donations to the University.

(2) The number of members to be elected or appointed under clauses (viii) and (x) and the tenure of office of members to be elected or appointed under clauses (viii), (x), ³* and (xii) of sub-section (1) shall

¹These words were inserted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²Clause (xi) was omitted, *ibid.*

³The letters "(xi)" were omitted, *ibid.*

of 1920.]

(Secs. 17—20.)

be prescribed by the Statutes, and the manner of voting for the election of members to be elected under clauses (viii) and (ix) of sub-section (1) shall be prescribed by the Ordinances.

17. (1) The Court shall, on a date to be fixed by the Vice-Chancellor, meet once a year at a meeting to be called the annual meeting of the Court. Meetings of the Court.

(2) The Vice-Chancellor may, whenever he thinks fit, and shall, upon a requisition in writing signed by not less than thirty members of the Court, convene a special meeting of the Court.

18. Subject to the provisions of this Act, the Court shall exercise the following powers and perform the following duties, namely:— Powers and duties of the Court.

- (a) of making Statutes, and of amending or repealing the same,
- (b) of considering and cancelling Ordinances, and
- (c) of considering and passing resolutions on the annual report, the annual accounts and the financial estimates,

and shall exercise such other powers and perform such other duties as may be conferred or imposed upon it by this Act or the Statutes.

19. The Executive Council shall be the executive body of the University, and its constitution and the terms of office of its members, other than *ex-officio* members, shall be prescribed by the Statutes. The Executive Council.

20. The Executive Council—

- (a) shall hold, control and administer the property and funds of the University, and for these purposes shall appoint from among its own members a Finance Committee to advise it on matters of finance. The Treasurer shall be Chairman of the Finance Committee, and at least one member of the Committee shall be a member elected to the Executive Council by the Court;
- (b) shall direct the form, custody and use of the Common Seal of the University;
- (c) shall, subject to the powers conferred by this Act on the Vice-Chancellor, regulate and

Powers and duties of the Executive Council.

(Sec. 21.)

determine all matters concerning the University in accordance with this Act, the Statutes and the Ordinances:

Provided that no action shall be taken by the Executive Council in respect of the fees paid to examiners and the emoluments of teachers¹[without consulting the Academic Council];

- (d) shall lay before the²[Provincial Government] annually a full statement of all the requests received by it for financial assistance from any institution associated with the University, together with its views thereon;
- (e) shall administer any funds placed at the disposal of the University for specific purposes;
- (f) save as otherwise provided by this Act or the Statutes, shall appoint the officers (other than the Chancellor, the Vice-Chancellor and the Treasurer), teachers, clerical staff and servants of the University, and shall define their duties and the conditions of their service, and shall provide for the filling of temporary vacancies in their posts;
- (g) shall have power to accept transfers of any moveable or immoveable property on behalf of the University;
- (h) shall publish the results of the University examinations;
- (i) shall exercise such other powers and perform such other duties as may be conferred or imposed on it by this Act or the Statutes; and
- (j) shall exercise all other powers of the University not otherwise provided for by this Act or the Statutes.

The Academic Council.

21. The Academic Council shall be the academic body of the University, and shall, subject to the provisions of this Act, the Statutes and the Ordinances, have the control and general regulation, and be responsible for the maintenance of standards of instruction, education and examination within the University, and

¹These words were substituted for the words "otherwise than on the recommendation of the Academic Council" by s. 5 of the Dacca University (Amendment) Act, 1928 (Ben. Act II of 1928).

²These words were substituted for the words "Local Government." by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1923.]

(Sec. 22.)

shall exercise such other powers and perform such other duties as may be conferred or imposed upon it by the Statutes. It shall have the right to advise the Executive Council on all academic matters. The constitution of the Academic Council and the term of office of its members, other than *ex-officio* members, shall be prescribed by the Statutes.

22. (1) The University shall include the Facul- The Faculties.
ties of Arts, Science, Law, Medicine and Agriculture, and such other Faculties (whether formed by the subdivision or combination of an existing Faculty or Faculties, or by the creation of a new Faculty or otherwise) as may be prescribed by the Statutes. Each Faculty shall, subject to the control of the Academic Council, have charge of the teaching and the courses of study and the research work in such subjects as may be assigned to such Faculty by the Ordinances.

(2) The constitution and powers of the Faculties shall be prescribed by the Statutes.

(3) There shall be a Dean of each Faculty, who shall be elected in the manner laid down in sub-section (6); and shall be responsible for the due observance of the Statutes, Ordinances and Regulations relating to the Faculty.

(4) Each Faculty shall comprise such Departments of teaching as may be prescribed by the Ordinances. The head of every such Department shall be the Professor of the Department or, if there is no Professor, the Reader. If there is more than one Professor or more than one Reader of a Department, as the case may be, the Vice-Chancellor shall appoint such Professor or Reader to be head of the Department as he thinks fit. The head of the Department shall be responsible to the Dean for the organisation of the teaching in that Department.

(5) The Ordinances shall provide for Departments of Oriental Studies (including Departments of Islamic and Sanskritic Studies) in the Faculty of Arts, in which the same degrees shall be conferred as in the other Departments of that Faculty.

(6) The Dean of a Faculty shall be elected by the Faculty from among the heads of Departments of the Faculty. The Dean shall receive in respect of his duties as Dean, such additional remuneration (if any) as shall be fixed by the Executive Council, and shall hold office as Dean for such term as may be prescribed by the Statutes.

(Secs. 23-27.)

Other
authorities
of the
University.

23. The constitution, powers and duties of such other authorities as may be declared by the Statutes to be authorities of the University shall be provided for in the manner prescribed by the Statutes.

University Boards.

University
Boards.

24. The University shall include a Residence, Health and Discipline Board and such other Boards as may be prescribed by the Statutes.

Constitution,
etc. of
Boards to be
prescribed by
Ordinances.

25. The constitution, powers and duties of the Residence, Health and Discipline Board and of all other Boards of the University shall be prescribed by the Ordinances.

Statutes, Ordinances and Regulations.

Statutes.

26. Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:—

- (a) the conferment of honorary degrees;
- (b) the institution of Fellowships, Scholarships, Exhibitions and Prizes;
- (c) the term of office and conditions of service of the Vice-Chancellor;
- (d) the designations and powers of the officers of the University;
- (e) the constitution, powers and duties of the Court, the Executive Council, the Academic Council and the Faculties;
- (f) the institution and maintenance of Halls and the management of Hostels;
- (g) the mode of appointment of the Professors and Readers of the University;
- (h) the constitution of a pension or provident fund for the benefit of the officers, teachers, clerical staff and servants of the University;
- (i) the maintenance of a register of registered graduates; and
- (j) all matters which by this Act are to be or may be prescribed by the Statutes.

Statutes how
made.

27. (1) The first Statutes shall be those set out in the Schedule.

(2) The Statutes may be amended, repealed or added to by Statutes made by the Court in the manner hereinafter appearing.

of 1920.]

(Sec. 28.)

- (3) The Executive Council may propose to the Court the draft of any Statute to be passed by the Court. Such draft shall be considered by the Court at its next meeting. The Court may approve such draft and pass the Statute, or may reject it or return it to the Executive Council for reconsideration, either in whole or in part, together with any amendments which the Court may suggest.

(4) Where any Statute has been passed or a draft of a Statute has been rejected by the Court, it shall be submitted to the Chancellor, who may refer the Statute or draft back to the Court for further consideration or, in the case of a Statute passed by the Court, assent thereto or withhold his assent. A Statute passed by the Court shall have no validity until it has been assented to by the Chancellor.

(5) The Executive Council shall not propose the draft of any Statute affecting the status, powers or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion upon the proposal. Any opinion so expressed shall be in writing and shall be considered by the Court, and shall be submitted to the Chancellor.

(6) Notwithstanding anything contained in this section, no Statute shall be made affecting the proportion or method of Muhammadan representation on the Court, the Executive Council or the Academic Council, save with the previous sanction of the '[Provincial Government].

28. Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely:—

Ordinances.

- (a) the courses of study to be laid down for all degrees and diplomas of the University;

²[(aa) the manner in which the lecturing work in the laboratories or workshops and other teaching referred to in subsection (1) of section 6 shall be conducted;

(aaa) the conditions in accordance with which the tutorial instruction referred to in subsection (4) of section 6 shall be given;]

¹These words were substituted for the words "Governor General in Council" by the 1st Sch. of the Government of India (Adaptation of India Laws) Order, 1937.

²Clauses (aa) and (aaa) were inserted by s. 6 of the Dacca University (Amendment) Act, 1928 (Ben. Act II of 1928).

(Sec. 29.)

- (b) the conditions under which students shall be admitted to the degree or diploma courses, and to the examinations of the University, and shall be eligible for degrees and diplomas;
- (c) the admission of students to the University;
- (d) the conditions of residence of the students of the University, the levying of fees for residences in Halls, and the licensing of Hostels;
- (e) the fees to be charged for courses of study in the University and for admission to the examinations, degrees, and diplomas of the University;
- (f) the giving of religious instructions;
- (g) the formation of Departments of teaching in the Faculties;
- (h) the constitution, powers and duties of the Boards of the University;
- (i) the conduct of examinations; and
- (j) all matters which by this Act or the Statutes are to be or may be provided for by the Ordinances.

Ordinances
how made.

29. (1) Saves as otherwise provided in this section, Ordinances shall be made by the Executive Council:

Provided that no Ordinance shall be made—

- (a) affecting the admission of students, or prescribing examinations to be recognised as equivalent to the University examinations or the further qualifications mentioned in sub-section (2) of section 34 for admission to the degree courses of the University, unless a draft of the same has been proposed by the Academic Council, or
- (b) affecting the conduct or standard of examinations or any course of study, except in accordance with a proposal of the Faculty or Faculties concerned, and unless a draft of such Ordinance has been proposed by the Academic Council, or
- (c) affecting the conditions of residence of students, except after consultation with the Residence, Health and Discipline Board.

of 1929.]

(Sec. 30.)

(2) The Executive Council shall not have power to amend any draft proposed by the Academic Council under sub-section (1), but may reject it or return it to the Academic Council for re-consideration, either in whole or in part, together with any amendments which the Executive Council may suggest.

(3) All Ordinances made by the Executive Council shall be submitted, as soon as may be, to the Chancellor and the Court, and shall be considered by the Court at its next meeting. The Court shall have power, by a resolution passed by a majority of not less than two-thirds of the members voting, to cancel any Ordinance made by the Executive Council, and such Ordinance shall, from the date of such resolution, be void.

(4) The Chancellor may, at any time after any Ordinance has been considered by the Court, signify to the Executive Council his disallowance of such Ordinance, and, from the date of receipt by the Executive Council of intimation of such disallowance, such Ordinance shall become void.

(5) The Chancellor may direct that the operation of any Ordinance shall be suspended until he has had an opportunity of exercising his power of disallowance. An order of suspension under this sub-section shall cease to have effect on the expiration of one month from the date of such order, or on the expiration of fifteen days from the date of consideration of the Ordinance by the Court, whichever period expires later.

(6) Where the Executive Council has rejected the draft of an Ordinance proposed by the Academic Council, the Academic Council may appeal to the Chancellor, who may, if he approves the draft, make the Ordinance. An Ordinance made under this sub-section shall cease to have effect on the expiry of six months from the making thereof.

30. (1) The authorities and the Boards of the University may make Regulations consistent with this Act, the Statutes and the Ordinances— Regulations.

- (a) laying down the procedure to be observed at their meetings and the number of members required to form a quorum;
- (b) providing for all matters which by this Act, the Statutes or the Ordinances are to be prescribed by Regulations; and
- (c) providing for all other matters solely concerning such authorities and Boards and not provided for by this Act, the Statutes and the Ordinances.

(Secs. 31—33.)

(2) Every authority of the University shall make Regulations providing for the giving of notice to the members of such authority of the dates of meetings and of the business to be considered at meetings, and for the keeping of a record of the proceedings of meetings.

(3) The Executive Council may direct the amendment, in such manner as it may specify, of any Regulation made under this section or the annulment of any Regulation made under sub-section (1):

Provided that any authority or Board of the University which is dissatisfied with any such direction may appeal to the Chancellor, whose decision in the matter shall be final.

Residence, Halls and Hostels.

Residence.

31. Every student of the University shall reside in a Hall or Hostel, or under such conditions as may be prescribed by the Statutes and the Ordinances.

Halls.

32. The Halls of the University shall be—

(a) the Dacca Hall,

¹[(b) the Salimullah Muslim Hall],

(c) the Jagannath Hall, and

(d) such other Halls as may be prescribed by the Statutes.

Hostels.

33. (1) The Hostels shall be such as may hereafter be approved and licensed by the Executive Council on such general or special conditions as may be prescribed by the Ordinances.

(2) The Wardens and superintending staff of Hostels shall be appointed in the manner prescribed by the Statutes.

(3) The conditions of residence in Hostels shall be prescribed by the Ordinances, and every Hostel shall be subject to inspection by any member of the Residence, Health and Discipline Board authorised in this behalf by the Board and by any officer of the University authorised in this behalf by the Executive Council.

(4) The Executive Council shall have power to suspend or withdraw the license of any Hostel which is not conducted in accordance with the conditions prescribed by the Ordinances.

¹Clause (b) was substituted for the original clause by s. 7 of the Dacca University (Amendment) Act, 1928 (Ben. Act II of 1928).

of 1920.]

(Secs. 34—36.)

Admission and Examinations.

34. (1) Admission of students to the University shall be made by an admission committee (including at least one Provost and one Warden) appointed for that purpose by the Academic Council. Admission to University courses.

(2) Students shall not be eligible for admission to a course of study for a degree unless they have passed the Intermediate Examination of an Indian University incorporated by any law for the time being in force, or an examination recognised in accordance with the provisions of this section as equivalent thereto, and possess such further qualifications as may be prescribed by the Ordinances.

(3) The conditions under which students may be admitted to the diploma courses of the University shall be prescribed by the Ordinances.

(4) The University shall not, save with the previous sanction of the ¹[Provincial Government], recognise (for the purposes of admission to a course of study for a degree), as equivalent to its own degrees, any degree conferred by any other University, or, as equivalent to the Intermediate Examination of an Indian University, any examination conducted by any other authority.

35. (1) All arrangements for the conduct of examinations shall be made, and all examiners shall be appointed by the Academic Council in such manner as may be prescribed by this Act and the Ordinances. Examinations.

(2) If during the course of an examination any examiner is for any cause incapable of acting as such, the Vice-Chancellor shall appoint an examiner to fill the vacancy.

(3) At least one examiner who is not a member of the University shall be appointed for each subject included in a Department of teaching and forming part of the course which is required for a University degree.

(4) The Academic Council shall appoint examination committees, consisting of members of its own body or of other persons or of both, as it thinks fit, to moderate examination questions, to prepare the results of the examinations and to report such results to the Executive Council for publication.

Annual Report and Accounts.

36. The annual report of the University shall be prepared under the direction of the Executive Council, Annual report.

¹See foot-note 1 on p. 895, ante.

(Secs. 37—40.)

and shall be submitted to the Court on or before such date as may be prescribed by the Statutes, and shall be considered by the Court at its annual meeting. The Court may pass resolutions thereon and communicate the same to the Executive Council which shall take such action thereon as it thinks fit.

Annual
accounts.

37. (1) The annual accounts and balance-sheet of the University shall be prepared under the direction of the Executive Council, and shall be submitted to the ¹[Provincial Government] for the purposes of audit.

(2) The accounts when audited shall be published by the Executive Council in the ²[*Official Gazette*], and copies thereof shall, together with copies of the audit report, if any, be submitted to the Court, ³[and to the Provincial Government]. The Executive Council shall also submit to the Court, on or before such date as may be prescribed by the Statutes, a statement of the financial estimates for the ensuing year.

(3) The annual accounts and the financial estimates shall be considered by the Court at its annual meeting, and the Court may pass resolutions thereon and communicate the same to the Executive Council which shall take such action thereon as it thinks fit.

*Supplementary Provisions.*Removal of
names of
registered
graduates.

38. The Chancellor shall, with the concurrence of not less than two-thirds of the members of the Executive Council for the time being in India, have power to remove the name of any person from the register of registered graduates.

Disputes as
to constitution
of University
authorities
and bodies.

39. If any question arises whether any person has been duly elected or appointed as, or is entitled to be, a member of any authority or other body of the University, the matter shall be referred to the Chancellor, whose decision thereon shall be final.

Appeals to
Chancellor.

40. (1) An appeal may be made by petition to the Chancellor against the order of any officer or authority of the University affecting any class of persons in the University. The Chancellor shall send a copy of any such petition to the officer or authority concerned, and shall give such officer or authority an opportunity to show cause why the appeal should not be entertained.

¹These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "*Calcutta Gazette*", *ibid.*

³These words were substituted for the words "to the Local Government and to the Governor General in Council", by the 1st Sch., *ibid.*

of 1922.]

(Secs. 41—44.)

(2) The Chancellor may reject any such appeal of may, if he thinks fit, appoint a commission of persons, not being officers of the University or members of any authority thereof, to inquire into the matter and report to him thereon. On receipt of the commission's report, the Chancellor shall send a copy thereof to the Executive Council. The Executive Council shall take such report into consideration and shall, within three months of the receipt thereof, pass a resolution thereon which shall be communicated to the Chancellor.

(3) A commission appointed under sub-section (2) may require any officer or authority of the University to furnish it with any papers or information which are, in the opinion of the commission, relevant to the matter under inquiry, and such officer or authority shall be bound to comply with such requisition.

41. Where any authority of the University is given power by this Act or the Statutes to appoint committees, such committees shall, unless otherwise provided, consist of members of the authority concerned and of such other persons (if any) as the authority in each case may think fit.

Constitution of committees.

42. All casual vacancies among the members (other than *ex-officio* members) of any authority or other body of the University shall be filled as soon as conveniently may be by the person or body who appointed, elected or co-opted the member whose place has become vacant, and the person appointed, elected or co-opted to a casual vacancy shall be a member of such authority or body for the residue of the term for which the person whose place he fills would have been a member.

Filling of casual vacancies.

43. No act or proceeding of any authority or other body of the University shall be invalidated merely by reason of the existence of a vacancy or vacancies among its members.

Proceedings of University authorities and bodies not invalidated by vacancies.

44. (1) Every salaried officer and teacher of the University shall be appointed on a written contract. The contract shall be lodged with the Registrar of the University, and a copy thereof shall be furnished to the officer or teacher concerned.

Conditions of service.

(2) Any member of the public services in India, whom it is proposed to appoint to a post in the University shall, subject to the approval of such appointment

(Secs. 45, 46.)

the Government ¹[under which he is serving], have the option—

- (i) of having his services lent to the University for a specified period and remaining liable to recall to ²[the service of the Crown] at the discretion ³[of that Government] at the end of that period; or
- (ii) of resigning ²[the service of the Crown] on entering the service of the University.

Tribunal of Arbitration.

45. Any dispute arising out of a contract between the University and any officer or teacher of the University shall, on the request of the officer or teacher concerned, be referred to a Tribunal of Arbitration consisting of one member appointed by the Executive Council, one member nominated by the officer or teacher concerned, and an umpire appointed by the Chancellor. The decision of the Tribunal shall be final, and no suit shall lie in any Civil Court in respect of the matters decided by the Tribunal. ⁴[Every such request shall be deemed to be a submission to arbitration upon the terms of this section, within the meaning of the Indian Arbitration Act, 1899, and all the provisions of that Act, with the exception of section 2 thereof, shall apply accordingly.] **IX of 1899.**

Pension or provident fund.

46. (1) The University shall constitute for the benefit of its officers, teachers, clerical staff and servants ⁵[such pension and provident funds as it may deem fit] in such manner and subject to such conditions as may be prescribed by the Statutes.

(2) Where such a pension or provident fund has been so constituted, the ⁶[Provincial Government] may, notwithstanding anything contained in the Provident Funds Act, 1897, by notification in the ⁷[Official **IX of 1897.**

¹These words were inserted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "Government Service", *ibid.*

³These words were substituted for the words "of the Government", *ibid.*

⁴These words were substituted by the Repealing and Amending Act, 1920 (XXXI of 1920).

⁵These words were substituted for the words "a pension or provident fund", *ibid.*

⁶These words were substituted for the words "Governor General in Council" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁷These words were substituted for the words "Gazette of India" by paragraph 4(1), *ibid.*

of 1923.]

(Secs. 47, 48.)

Gazette], declare that the provisions of the said Act shall apply to such fund as if it were a Government Provident Fund.

47. Save as otherwise provided in this Act, the powers of the University conferred by or under this Act shall not extend beyond a radius of five miles from the Convocation Hall of the University. Notwithstanding anything in any other law for the time being in force, no educational institution beyond that limit shall be associated with or admitted to any privileges of the University, and no educational institution within that limit shall be associated in any way with or be admitted to any privileges of any other University incorporated by law in British India, and any such privileges granted by any such other University to any educational institution within that limit prior to the commencement of this Act shall be deemed to be withdrawn on the commencement of this Act:

Territorial
exercise of
powers.

Provided that nothing in this section shall apply to any agricultural or other technical institution established or maintained ¹[in Bengal] in connection with the University with the sanction of the ²[Provincial Government]:

Provided, further, that it shall be lawful for any Faculty, other than the Faculties of Arts and Science, to assemble at Calcutta whenever, in the opinion of the Vice-Chancellor, such a course is necessary.

³47A. The ⁴[Provincial Government] shall, for the purposes of this Act, contribute annually to the University a sum of five and a half lakhs of rupees.

Annual contribu-
tion by the
Provincial
Government to
the University.

Transitory Provisions.

48. Notwithstanding anything contained in this Act or the Ordinances, any student of the Dacca College, the Dacca Law College, the Dacca Training College, or the Jagannath College at Dacca who immediately prior to the commencement of this Act, was studying for any examination of the Calcutta University higher than the Intermediate Examination shall be permitted to complete his course in preparation

Completion
of courses
for students
at Dacca
Colleges.

¹These words were inserted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 6 on p. 902, *ante*.

³Section 47A was inserted by s. 2 of the Dacca University (Amendment) Act, 1925.

⁴These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Secs. 49—51.)

therefor, and the University shall provide for such students instruction and examinations in accordance with the Prospectus of Studies of the Calcutta University.

Appointment
of first Vice-
Chancellor.

49. The first Vice-Chancellor may be appointed at any time after the passing of this Act. Such appointment shall, notwithstanding anything contained in sub-section (1) of section 10, be made by the ¹[Central Government] for such term and on such conditions as ²[it] thinks fit.

First
appointments
of University
staff.

50. (1) At any time after the passing of this Act and until such time as the authorities of the University shall have been duly constituted—

- (a) the Treasurer may be appointed by the ³[Provincial Government] of Bengal;
- (b) any other officers of the University may be appointed by the Vice-Chancellor with the previous sanction of the ³[Provincial Government] of Bengal;
- (c) teachers of the University shall be appointed by the ³[Provincial Government] of Bengal after considering the recommendations of an Advisory Committee consisting of the Vice-Chancellor, the Director of Public Instruction, Bengal, and such other person or persons, if any, as the ³[Provincial Government] of Bengal thinks fit to associate with them.

(2) Any appointment made under sub-section (1) shall be for such period and on such conditions as the appointing authority thinks fit:

Provided that no such appointment shall be made until financial provision has been made therefor by the ⁴[Provincial Government] or otherwise.

Extraordinary
powers of the
Vice-
Chancellor.

51. At any time after the passing of this Act the Vice-Chancellor may, with the previous approval of the Chancellor and subject to the provision of funds by the ⁴[Provincial Government] or otherwise, take such

¹These words were substituted for the words "Governor General in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²This word was substituted for the word "he" by paragraph 5(2), *ibid.*

³These words were substituted for the word "Governor" by paragraph 4(1), *ibid.*

⁴These words were substituted for the words "Local Government" *ibid.*

of 1920.]

(The Schedule.)

action, consistent so far as may be with the provisions of this Act and the Statutes, as he may think necessary for the purpose of bringing the University into being, and for that purpose may exercise any power which by this Act or the Statutes is to be conferred on any officer or authority of the University.

THE SCHEDULE.

THE FIRST STATUTES OF THE UNIVERSITY.

[See section 27 (1).]

1. In these Statutes, unless there is anything **Definitions.**
repugnant in the subject or context,—

(a) "the Act" means the Dacca University Act, 1920, and "section" means a section of the Act; and

(b) "officers", "authorities", "Professors,"
"Readers," "Lecturers," "teachers,"
"clerical staff," "servants" and "regis-
tered graduates" mean, respectively,
officers, authorities, Professors, Readers,
Lecturers, teachers, clerical staff, servants
and registered graduates of the Univer-
sity.

2. (1) In addition to the officers mentioned in sub- **Constitution**
section (1) of section 16, the following persons shall be **of the Court.**
ex-officio members of the Court, namely:—

1* * *

(ii) the Vice-Chancellor of the University of Calcutta;

(iii) the Commissioner, the Collector and the District and Sessions Judge of Dacca;

(iv) the Director of Public Instruction in Bengal or the Secretary (if any) to the ¹[Provincial Government] in the Department of Education, and the Director of Public Instruction in Assam;

¹Clause (i) was omitted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "Local Government" by paragraph 4(1), *ibid.*

(The Schedule.)

- (v) the Director of Agriculture for Bengal;
- (vi) the Director of Industries for Bengal;
- (vii) the Civil Surgeon of Dacca;
- (viii) the Superintending Engineer, Eastern Circle, Bengal,
- (ix) the Assistant Director of Public Instruction for Muhammadan education in Bengal;
- (x) the Chairman of the Dacca Municipality and of the Dacca District Board;
- (xi) the Inspector of Schools of the Dacca Division;
- (xii) the Inspectress of Girls' Schools for the Dacca Circle;
- (xiii) the Proctor of the University;
- (xiv) the Librarian of the University; and
- (xv) the Principals of Dacca Medical School, the Dacca Madrassah, the Calcutta Madrassah, the Chittagong Madrassah, the Sylhet Madrassah, and the Eden High School, the President of the Saraswat Samaj and the Principals of all educational institutions in the Dacca Division which prepare students for admission to the degree courses of a University.

(2) The number of graduates to be elected as members of the Court by the registered graduates from among their own body shall be thirty, of whom fifteen shall be Muhammadan graduates elected by the Muhammadan registered graduates, and fifteen shall be non-Muhammadan graduates elected by the non-Muhammadan registered graduates.

(3) The number of persons to be appointed by the Chancellor under clause (x) of sub-section (I) of section 16 shall be forty:

Provided that the Chancellor shall, in making such appointments, secure that, as far as possible, fifty per cent. of the non-European members of the Court shall be Muhammadans.

(4) Save as otherwise provided, members of the Court other than *ex-officio* members shall hold office for a period of three years:

Provided that members elected by the Academic Council shall hold office so long only within the said period as they continue to be teachers.

of 1929.]

(The Schedule.)

3. (1) The members of the Executive Council, in addition to the Vice-Chancellor and the Treasurer, shall be—

Constitution
of the
Executive
Council.

Class I.—Ex-officio members.

- (i) The Commissioner of the Dacca Division;
- (ii) the Deans of the Faculties;
- (iii) the Provosts of the Dacca, the Muhammadan and the Jagannath Halls.

Class II.—Other members.

- (iv) Two non-Muhammadan members of the Court elected by the non-Muhammadan members thereof at its annual meeting;
- (v) two Muhammadan members of the Court elected by the Muhammadan members thereof at its annual meeting; and
- (vi) four persons, of whom at least two shall be teachers, appointed by the Chancellor: Provided that, so long as one-half of the non-European members of the Executive Council, as constituted under this sub-clause but excluding the Vice-Chancellor and the Treasurer, are not Muhammadans, any person so appointed shall be a Muhammadan.

(2) The Executive Council as constituted under sub-clause (1) shall co-opt as member one Warden.

(3) Members other than *ex-officio* members shall hold office for a period of three years:

Provided that members elected by any body of persons from among their own number shall hold office so long only within the said period as they continue to be members of the body which elected them.

4. Subject to the provisions of the Act, the Executive Council shall have the following powers, namely:—

Powers of the
Executive
Council.

- (a) to institute, at its discretion, such Professorships, Readerships, Lectureships, or other teaching posts as may be proposed by the Academic Council;

(The Schedule.)

- (b) to abolish or suspend, after report from the Academic Council thereon, any Professorship, Readership, Lectureship, or other teaching post;
- (c) to appoint, in accordance with the Statutes, teachers, officers, clerical staff and servants;
- (d) to delegate, subject to such conditions as may be prescribed by Regulations made by the Executive Council, its power to appoint teachers, officers, clerical staff and servants to such person or authority as the Executive Council may determine;
- (e) to manage and regulate the finances, accounts, investments, property and all administrative affairs whatsoever of the University, and for that purpose, to appoint such agents as it may think fit;
- (f) to accept bequests, donations and transfers of property to the University:
 Provided that all such bequests, donations and transfers shall be reported to the Court at its next meeting;
- (g) to provide the buildings, premises, furniture, apparatus, equipment and other means needed for carrying on the work of the University;
- (h) after report from the Finance Committee to enter into, vary, carry out and cancel contracts on behalf of the University; and
- (i) to invest any monies belonging to the University, including any unapplied income, in any of the securities described in section 20 of the Indian Trusts Act, 1882, or in the purchase of immoveable property in India, with the like power of varying such investments; or to place on fixed deposit in any bank approved in this behalf by the ¹[Provincial Government] any portion of such monies not required for immediate expenditure.

II of 1882.

¹These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(The Schedule.)

5. (1) The members of the Academic Council, in addition to the Vice-Chancellor, shall be— The Academic Council.

Class I.—Ex-officio members.

- (i) The Deans of the Faculties;
- (ii) the Librarian of the University;
- (iii) the Professors; and
- (iv) the Provosts.

Class II.—Other members.

- (v) One Warden nominated by the Vice-Chancellor; and
- (vi) persons, if any, not exceeding three in number and not being teachers, appointed by the Chancellor on account of their possessing expert knowledge in such subjects of study as may be selected by the Academic Council as constituted under heads (i) to (v).

(2) The Academic Council as constituted under sub-clause (1) shall co-opt as members three Readers and two Lecturers.

(3) The Academic Council as constituted under sub-clauses (1) and (2) shall co-opt as members teachers not exceeding one-tenth of its number as so constituted:

Provided that so long as one-fourth of the total members, included teachers co-opted under this sub-clause, are not Muhammadans, any teacher so co-opted shall be a Muhammadan.

(4) Members other than *ex-officio* members shall hold office for a period of three years:

Provided that Readers, Lecturers or teachers co-opted as such shall hold office so long only within the said period as they continue to be Readers, Lecturers or teachers, respectively.

6. The Academic Council shall have the following powers, namely:—

Powers of the Academic Council.

- (a) to make proposals to the Executive Council for the institution of Professorships, Readerships, Lectureships or other teaching posts, and in regard to the duties and emoluments thereof;

(The Schedule.)

- (b) to make Regulations for and to award in accordance with such Regulations Fellowships, Scholarships, Exhibitions, bursaries, medals and other rewards;
- (c) to appoint examiners after report from the Faculties concerned;
- (d) to control and manage the University Library or Libraries, to frame regulations regarding their use, and to appoint a Library Committee under the general control of the Academic Council to manage the affairs of the Library;
- (e) to formulate, modify or revise, subject to the control of the Executive Council, schemes for the constitution or re-constitution of Faculties and for the assignment of subjects to such Faculties;
- (f) to assign teachers to the Faculties; and
- (g) to promote research within the University, and to require reports on such research from the persons employed thereon.

The faculties.**7. (1) Each Faculty shall consist of—**

- (i) the Professors of the Departments comprised in the Faculty;
- (ii) such teachers of subjects assigned to the Faculty as may be appointed to the Faculty by the Academic Council;
- (iii) such teachers of subjects not assigned to the Faculty but having, in the opinion of the Academic Council, an important bearing on those subjects as may be appointed to the Faculty by the Academic Council; and
- (iv) such other persons as may be appointed to the Faculty by the Academic Council on account of their possessing expert knowledge in a subject or subjects assigned to the Faculty.

(2) The total number of members of each Faculty shall not exceed in the case of the Faculties of Arts and Science thirty, and in the case of any other Faculty fifteen, except with the sanction of the Chancellor given on the request of the Academic Council.

of 1920.]

(The Schedule.)

8. Subject to the provisions of the Act, each Faculty shall have the following powers, namely:— **Powers of the Faculties.**

(a) to constitute Committees of Courses and Studies;

(b) to recommend to the Academic Council, after consulting the Committees of Courses and Studies, the names of examiners in subjects assigned to the Faculty.

9. There shall be a Board of Co-ordination composed of the Vice-Chancellor, who shall be Chairman thereof, the Deans of the Faculties and the Registrar, to organise the teaching of the University, and in particular to co-ordinate the work and time-tables of the various Faculties, and to assign lecture-rooms, laboratories and other rooms to the Faculties. **Board of Co-ordination.**

10. (1) The Dean of each Faculty shall be the executive officer of the Faculty, and shall preside at its meetings. He shall hold office for three years. **The Dean.**

(2) He shall issue the lecture lists of the University in the Departments comprised in the Faculty, and shall be responsible for the conduct of teaching therein.

(3) He shall have the right to be present and to speak at any meeting of any committee of the Faculty, but not to vote unless he is a member of the committee.

11. (1) The appointment of the Warden and the superintending staff of a Hostel shall be subject to the approval of the Executive Council. **Hostels.**

(2) Every student not residing in a Hall or Hostel shall be attached to a Hall or Hostel for tutorial help and disciplinary supervision, and for such other purposes as may be prescribed by the Ordinances.

12. The Court may, on the recommendation of the Executive Council, by a resolution passed with the concurrence of not less than two-thirds of the members voting, withdraw any degree or diploma conferred by the University. **Withdrawal of degrees and diplomas.**

13. (1) All proposals for the conferment of honorary degrees shall be made by the Academic Council to the Executive Council, and shall require the assent of the Court before submission to the Chancellor for confirmation: **Honorary degrees.**

Provided that in cases of urgency the Chancellor may act on the recommendation of the Executive Council only.

(The Schedule.)

(2) Any honorary degree conferred by the University may, with the previous approval of the Court and the sanction of the Chancellor, be withdrawn by the Executive Council.

Registered graduates.

14. The following persons shall, on payment of such fees as may be prescribed by the Statutes, be entitled to have their names enrolled in the register of registered graduates and to enjoy all the privileges of registration, namely:—

(a) for a period of five years from the commencement of the Act all graduates of three years' standing or upwards of any other Indian University incorporated by any law for the time being in force, who are not for the time being registered as graduates in any such other University, and who—

(i) have studied at the Dacca College, the Jagannath College at Dacca or the Dacca Law College for at least two years, or at the Dacca Training College for at least one year, and ordinarily reside in the Dacca or Chittagong Divisions of the Bengal Presidency; or

(ii) have graduated at any time from any of the said Colleges,

and apply to the University to be granted *ad-eundem* degrees of the University; and

(b) for a period of seven years from the commencement of the Act all Muhammadan graduates of three years' standing or upwards of any Indian University incorporated by any law for the time being in force, who are not for the time being registered as graduates of any such other University, and who ordinarily reside in the Dacca or Chittagong Divisions of the Bengal Presidency; and

(c) all graduates of the University of three years' standing and upwards.

Officers.

15. There shall be the following officers, namely:—

(i) a Proctor for the maintenance of the general discipline of the University, to whom the Vice-Chancellor may delegate such of his disciplinary powers as he may think fit; and

(ii) a Librarian for the University Library.

of 1926.]

(The Schedule.)

16. (1) Subject to the provisions of clause (c) of sub-section (1) of section 50 and of clause 17, appointments to Professorships and Readerships shall be made on the nomination of committees of selection constituted for the purposes as follows, namely:—

Committees of selection in India.

- (i) the Vice-Chancellor;
- (ii) one member of the Executive Council selected by the Executive Council,
- (iii) two members of the Academic Council selected by the Academic Council on the ground of their special knowledge of, or interest in, the subject or subjects with which the Professor or Reader, as the case may be, will be concerned;
- (iv) an officer of the ¹[Provincial Government] appointed by the ¹[Provincial Government], and
- (v) three persons (two of whom shall not be officers or teachers) appointed by the Chancellor:

Provided that, should a committee so constituted not include both a Hindu and a Muhammadan member, the Chancellor shall nominate an additional Hindu or Muhammadan member, or both, as the case may be.

(2) Committees of selection appointed under sub-clause (1) shall report to the Executive Council which shall, if it accepts the nomination of the committee, make the appointment to the post accordingly. If the Executive Council does not accept the nomination of the committee, it shall refer the case to the Chancellor, who shall make such appointment as he thinks fit.

17. (1) Of the Professorships not less than one-third shall be filled in one or other of the following manners, namely:—

Committees of selection on the United Kingdom.

- (a) on the nomination of committees of selection constituted for the purpose in the United Kingdom; or
- (b) if, in the opinion of the Chancellor, exceptional circumstances justify such a course, by appointment by the Secretary of State for India.

¹These words were substituted for the words "Local Government" by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Act XVIII of 1929.]

(The Schedule.)

(2) The committees of selection referred to in sub-clause (1) (a) shall be constituted as follows, namely:—

(i) two members resident in the United Kingdom appointed by the Academic Council,

(ii) two members resident in the United Kingdom appointed by the Secretary of State for India, one of whom shall be an Indian Member of the Council of India as constituted under the Government of India Act, and

5 & 6 Geo.
V Ch. 61.

(iii) one member appointed by the Chancellor.

(3) The Executive Council shall consider the report of a committee of selection constituted under sub-clause (2), and shall, if it accepts the nomination of the committee, make the appointment to the post accordingly. If the Executive Council does not accept the nomination of the committee, it shall refer the case to the Chancellor, who may either appoint the person nominated by the committee, or refer the case to the Secretary of State for India, and, in such case, the Secretary of State for India shall make such appointment as he thinks fit.

(4) Nothing in this clause shall apply to appointments made by the Chancellor under clause (c) of sub-section (1) of section 50.

**Appointment
of Lecturers
and other
teachers.**

18. Appointments to teaching posts other than Professorships and Readerships shall, subject to the provisions of the Act and the Statutes, be made in the manner prescribed by the Ordinances.

Act XXXV of 1925.

[The Madras, Bengal and Bombay Children (Supplementary) Act, 1925.]¹

(23rd September 1925.)

An Act to supplement certain provisions of the Madras Children Act, 1920, of the Bengal Children Act, 1922, and of the Bombay Children Act, 1924.

WHEREAS it is expedient to supplement by legislation in the Indian Legislature certain provisions of the Madras Children Act, 1920, of the Bengal Children Act, 1922, and of the Bombay Children Act, 1924, for the purpose hereinafter appearing; It is hereby enacted as follows:—

Mad. Act
IV of
1920.
Ben. Act
II of
1922.
Bom. Act
XIII
of 1924.

1. This Act may be called the Madras, Bengal and Bombay Children (Supplementary) Act, 1925. Short title.

2. The Madras Children Act, 1920, the Bengal Children Act, 1922, and the Bombay Children Act, 1924, shall, so far as regards the appellate and revisional jurisdiction conferred by the said Acts on the High Courts of Judicature at Madras, at Fort William in Bengal and at Bombay, respectively, be as valid as if the said Acts had been passed by the Indian Legislature. Validation of certain provisions of Madras Children Act, 1920, Bengal Children Act 1922, and Bombay Children Act, 1924.

¹For statement of Objects and Reasons, see Gazette of India, 1925, Pt. V, p. 195.

Act VIII of 1932.

[The Bengal Criminal Law Amendment (Supplementary) Act, 1932.]¹

(5th April 1939.)

An Act to supplement the Bengal Criminal Law Amendment Act, 1930.

WHEREAS it is expedient to supplement the Bengal Criminal Law Amendment Act, 1930; It is hereby enacted as follows:—

Ben. Act
VI of
1930.

1. This Act may be called the Bengal Criminal Law Amendment (Supplementary) Act, 1932. Short title.

Ben. Act
VI of
1930.

2. The power of the ³[Provincial Government] under sub-section (1) of section 2 of the Bengal Criminal Law Amendment Act, 1930 (hereinafter referred to as the local Act), to direct by order in writing that any person shall be committed to custody in jail shall be deemed to include a power to direct, by order in writing made with the previous sanction of the ⁴[Central Government], that such person shall be committed to custody in any jail in British India; and, for all or any of the purposes of the local Act, an order so made shall be deemed to be an order made under section 2 of that Act, and all the provisions of that Act shall apply to such order.

Power to order
custody in jail
outside Bengal.

Page 917—

In line 4, for "1939" read "1932". the
[No. 1, dated the 15th September, 1939.] local
ly in
t Act

to provide for the manner of custody, of any such person, shall be exercised by the ³[Provincial Government] of the province in which the jail is situated, and rules made by such ³[Provincial Government] in exercise of such powers shall be published in the ⁵[Official Gazette].

¹For Statement of Objects and Reasons, see Gazette of India, 1931, Pt. V, p. 8, and for the report of the Select Committee, see *ibid*, 1932, Pt. V, pp. 89 and 90.

²The second paragraph was omitted by s. 2 of the Bengal Criminal Law Amendment Supplementary (Extending) Act, 1934 (XXVI of 1934).

³These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words "Governor General in Council", *ibid*.

⁵These words were substituted for the words "local official Gazette" *ibid*.

918 *The Bengal Criminal Law Amendment (Supplementary)*
Act, 1932.

[Act VIII of 1932]

(Secs. 3—5.)

Construction.

3. References to the local Act in sections 14 and 15 of that Act shall be deemed also to be references to the local Act as supplemented by this Act.

Bar of certain
legal proceed-
ings.

4. The powers conferred by section 491 of the Code of Criminal Procedure, 1898, shall not be exercised in respect of any person arrested, committed to or detained in custody under the local Act or the local Act as supplemented by this Act. Act V of 1898.

5. [*Repeals.*] *Rep. by the Repealing Act, 1938 (I of 1938).*

Act XXIV of 1932.

[The Bengal Suppression of Terrorist Outrages (Supplementary) Act, 1932.]¹

(23rd December 1932.)

An Act to supplement the Bengal Suppression of Terrorist Outrages Act, 1932.

Ben. Act
XII of
1932.

WHEREAS it is expedient to supplement the Bengal Suppression of Terrorist Outrages Act, 1932; It is hereby enacted as follows:—

Act V of
1898.

1. This Act may be called the Bengal Suppression of Terrorist Outrages (Supplementary) Act, 1932. Short title.

2. In this Act,—

Definitions.

(a) "Code" means the Code of Criminal Procedure, 1898; and

(b) "local Act" means the Bengal Suppression of Terrorist Outrages Act, 1932.

3. (1) An appeal shall lie to the High Court of Appeals. Judicature at Fort William in Bengal, from—

(a) any sentence passed by a Special Magistrate in any trial held under the local Act in the Presidency-town of Calcutta,

(b) any sentence of transportation for a term exceeding two years, or of imprisonment for a term exceeding four years passed by a Special Magistrate in any trial under the local Act held outside the Presidency-town of Calcutta.

(2) An appeal under sub-section (1) shall be presented within thirty days from the date of the sentence, and shall be disposed of by the High Court in the manner provided in Chapter XXXI of the Code for the hearing of appeals.

4. Section 19 of the local Act shall have effect as if it had been enacted by the Indian Legislature.

Effect of
section 19 of
local Act.

¹For Statement of Objects and Reasons, see Gazette of India, 1932, Pt. V, p. 208.

920 *The Bengal Suppression of Terrorist Outrages
(Supplementary) Act, 1932.*

[Act XXIV of 1932]

(Sec. 5.)

**Exclusion of
interference of
Courts with
proceedings
under local
Act.**

5. Notwithstanding the provisions of the Code, or of any other law for the time being in force, or of anything having the force of law, there shall, save as provided in the local Act as supplemented by this Act, be no appeal from any order or sentence passed by a Special Magistrate under the local Act and save as aforesaid no Court shall have authority to revise such order or sentence, or to transfer any case from any such Magistrate, or to make any order under section 491 of the Code, or have any jurisdiction of any kind in respect of any proceedings of any such Magistrate, or of any direction made under Chapter II of the local Act:

¹The proviso was omitted by the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

Act IX of 1933.

(The Provincial Criminal Law Supplementing Act, 1933.)¹

(13th April 1933.)

An Act to supplement the provisions of the Bengal Public Security Act, 1932, the Bihar and Orissa Public Safety Act, 1933, the Bombay Special (Emergency) Powers Act, 1932, the United Provinces Special Powers Act, 1932, and the Punjab Criminal Law (Amendment) Act, 1932, for certain purposes.

WHEREAS it is expedient to supplement by legislation in the Indian Legislature the provisions of the Bengal Public Security Act, 1932, the Bihar and Orissa Public Safety Act, 1933, the Bombay Special (Emergency) Powers Act, 1932, the United Provinces Special Powers Act, 1932, and the Punjab Criminal Law (Amendment) Act, 1932, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Ben. Act
XXII of
1932.
B. and O.
Act I of
1933.
Bom. Act
XVI of
1932.
U. P. Act
XIV of
1932.
Punj. Act
III of
1932.

1. This Act may be called the Provincial Criminal Law Supplementing Act, 1933. Short title.

2. (1) An appeal shall lie to the High Court of Appeals. Judicature at Fort William in Bengal from—

(a) any sentence passed by a special Magistrate in any trial held under the Bengal Public Security Act, 1932, in the Presidency-town of Calcutta, and

(b) any sentence of imprisonment for a term exceeding 4 years passed by a Special Magistrate in any trial under the said Act held outside the Presidency-town of Calcutta.

(2) An appeal under sub-section (1) shall be presented within thirty days from the date of the sentence, and shall be disposed of by the High Court in the manner provided in Chapter XXXI of the Code of Criminal Procedure, 1898, for the hearing of appeals.

Act V of
1898.

¹For Statement of Objects and Reasons, see Gazette of India, 1933, Pt. V, p. 47.

**922 The Provincial Criminal Law Supplementing Act,
1933.**

[Act IX of 1933.]

(Sects. 3—6.)

**Effect of
certain sections
in provincial
Acts.**

3. Section 15 of the Bihar and Orissa Public Safety Act, 1933, section 29 of the Bombay Special (Emergency) Powers Act, 1932, and section 14 of the United Provinces Special Powers Act, 1932, shall have effect as if these sections had been enacted by the Indian Legislature.

B. and O.
Act I of
1933.
Bom. Act
XVI of
1932.
U. P. Act
XIV of
1932.

**Jurisdiction
barred.**

4. Except as provided in the Bengal Public Security Act, 1932, as supplemented by this Act, no proceeding or order purporting to be taken or made under the Bengal Public Security Act, 1932, shall be called in question by any Court, and no civil or criminal proceeding shall be instituted against any person for anything in good faith done or intended to be done under the said Act or against any person for any loss or damage caused to or in respect of any property whereof possession has been taken under the said Act.

Ben. Act
XXII of
1932.

**Bar of issue of
directions of
the nature of a
habeas corpus.**

5. The powers conferred by section 491 of the Code of Criminal Procedure, 1898, shall not be exercised in respect of any person arrested, or committed to or detained in custody under the provisions of the Punjab Criminal Law (Amendment) Act, 1932.

Act V of
1898.

Punj. Act
III of
1932.

6. [Certain powers of High Court not affected.]
Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

PART III.

Local Act made by the Governor General under section 67B of the Government of India Act, in force in the Province of Bengal.

**(THE BENGAL CRIMINAL LAW AMENDMENT
(SUPPLEMENTARY) ACT, 1925.]¹**

(Made by the Governor General on the 30th March 1925.)

An Act to supplement the Bengal Criminal Law Amendment Act, 1925.

WHEREAS it is expedient to supplement the Bengal Criminal Law Amendment Act, 1925; It is hereby enacted as follows:—

1. This Act may be called the Bengal Criminal Law Amendment (Supplementary) Act, 1925. Short title.

2. In this Act,—

Definitions.

Act V of
1898.

(a) "Code" means the Code of Criminal Procedure, 1898; and

(b) "local Act" means the Bengal Criminal Law Amendment Act, 1925.

3. (1) Any person convicted on a trial held by Commissioners under the local Act may appeal to the High Court of Judicature at Fort William in Bengal, and such appeal shall be disposed of by the High Court in the manner provided in Chapter XXXI of the Code. Appeals and confirmations.

(2) When the Commissioners pass a sentence of death, the record of the proceedings before them shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court which shall exercise, in respect of such proceedings, all the powers conferred on the High Court by Chapter XXVII of the Code.

4 to 6. Rep. by s. 5 of the Bengal Criminal Law Amendment (Supplementary) Act, 1932 (VIII of 1932).

¹For Statement of Objects and Reasons, see Gazette of India, 1925, Pt. V, p. 79.

PART IV.

Regulations made under the Government of India Act, 1870 and the Government of India Act, 1935, in force in the Province of Bengal.

(a).—*Regulations made under the Government of India Act, 1870, in force in the Province of Bengal.*

REGULATION V OF 1873.

(BENGAL EASTERN FRONTIER REGULATION, 1873.)¹

(27th August 1873).

A Regulation for the peace and government of certain districts on the Eastern Frontier of Bengal.

[Whereas the Secretary of State for India in Council Preamble.
has by Resolution in Council, declared the provisions of Act 33 Vict., Chap. 3, section 1, to be applicable to the districts of Kámrúp, Darrang, Nowgong, Sibságar, Lakhimpur, Garo Hills², Khási and Jaitiá Hills, Nágá Hills, Cachar³ * * *]

And whereas the Lieutenant-Governor of Bengal has proposed to the Governor General in Council a draft of the following Regulation, together with the reasons for proposing the same, for the peace and government of the said districts;

And whereas the Governor General in Council has taken such draft and reasons into consideration, and has approved of such draft, and the same has received the Governor General's assent;

The following Regulation is now published in the *Gazette of India*, and will be published in the *Calcutta Gazette*, and will thereupon have the force of law, under the 33rd of Victoria, chapter 3.

1. [This Regulation shall extend to the districts Local extent.
named in the preamble, and shall come into force on the 1st of November 1873.]

¹SHORT TITLE.—This short title was given by notification No. 13, dated the 11th October 1875, published in the *Gazette of India*, 1875, Pt. I, p. 529.

LOCAL EXTENT.—The only parts of Bengal in which this Regulation is in force are the districts of Jalpaiguri and Darjeeling, to which it was extended by Notification No. 605 P., dated the 25th February, 1904.

²Regulation V of 1873, so far as it applies to the Garo Hills District, was repealed by the Repealing Act, 1897 (V of 1897).

³The words "and Chittagong Hills," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

The Bengal Eastern Frontier

[Reg. V

(Secs. 2—6.)

Power to
prescribe and
alter inner
line.

2. It shall be lawful for the ¹[Provincial Government] of Bengal, * * * to prescribe, and from time to time to alter, by notification in the ²[*Official Gazette*], a line to be called "The Inner Line" in each or any of the above-named districts⁴.

The ¹[Provincial Government] may, by notification in the ²[*Official Gazette*], prohibit all British subjects, or any class of British subjects, or any persons residing in or passing through such districts from going beyond such line without a pass under the hand and seal of the chief executive officer of such district, or of such other officer as he may authorize to grant such pass; and the ¹[Provincial Government] may, from time to time, cancel or vary such prohibition.

Penalty for
crossing
line
without
pass.

3. Any British subject or other person so prohibited, who, after "The Inner Line" has been prescribed and notified in accordance with section 2 of this Regulation, goes beyond such line without a pass, shall be liable, on conviction before a Magistrate, ⁵[to imprisonment of either description which may extend to one year, or to a fine not exceeding one thousand rupees, or to both.]

Power to
prescribe
form
of pass.

4. The ¹[Provincial Government] may from time to time prescribe, by notification in the ²[*Official Gazette*], a form of pass for each district, and may in such form fix such restrictions or conditions as the ¹[Provincial Government] may deem fit, and may require the payment of such dues and fees for such passes as to the ¹[Provincial Government] may seem proper.

Any holder of such a pass shall, on breach of any such restriction or condition, be liable on conviction ³[to imprisonment of either description which may extend to one year or to a fine not exceeding one thousand rupees, or to both.]

¹These words were substituted for the words "Local Government" by paragraph 4 (I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words "with the previous sanction of the Governor General in Council" were omitted by Sch. XI, *ibid*.

³These words were substituted for the words "*Calcutta Gazette*" by paragraph 4 (I), *ibid*.

⁴Now read (in Bengal) the districts of Jalpaiguri and Darjeeling.

⁵These words were substituted by s. 2 of the Bengal Eastern Frontier (Amendment) Regulation, 1925 (Reg. V of 1925).

of 1873.]

(Secs. 5—7).

5. ¹[(1)] Any rubber, wax, ivory or other jungle-product ²[or any book, diary, manuscript, map, picture, photograph, film, curio or article of religious or scientific interest] found in the possession of any person convicted of an offence under this Regulation may be confiscated to Government by an order to be passed at the time of conviction by the Magistrate.

Confiscation
of jungle
product
found
with
offender.

³(2) If the Magistrate has reason to believe that any article which if found in the possession of a person convicted under this Regulation would have been liable to confiscation under sub-section (1) has been acquired or wholly or partly written, made or taken by such person beyond "The Inner Line," the Magistrate after giving the person in whose possession the article is found an opportunity to show cause why an order under this sub-section should not be passed in respect of the article may, unless it is proved that the article was not acquired, written, made or taken as aforesaid, order that such article be confiscated to Government.

6. The chief executive officer of any district comprised in any notification as aforesaid may, subject to the approval of the ⁴[Provincial Government], authorize, by a written instrument under his hand, any public servant to arrest and bring before him with the least practicable delay—

Power to
authorize
arrest.

firstly, any person prohibited from crossing "The Inner Line" prescribed for such district, if such person shall be found beyond the line and when asked to produce his pass shall refuse or be unable so to do:

Secondly, any person to whom a pass may have been granted, and who has committed any infraction of its conditions.

7. It shall not be lawful for any British subject or other person, not being a native of the districts comprised in the preamble of this Regulation, to acquire any interest in land or the product of land beyond the said "Inner Line" without the sanction of the ⁴[Provincial Government] or such office as the ⁴[Provincial Government] shall appoint in this behalf.

Acquisition
of interest
in land
by other
than
Natives of
districts
comprised in
preamble.

¹Section 5 was re-numbered as sub-section (1) of section 5 by s. 4(1) of the Bengal Eastern Frontier (Amendment) Regulation, 1925 (Reg. V of 1925).

²These words were inserted by s. 4 (1), *ibid.*

³Sub-section (2) was added by s. 4 (2), *ibid.*

⁴These words were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Secs. 8—11.)

Any interest so acquired may be dealt with as the
¹[Provincial Government] or its said officer shall
 direct.

The ¹[Provincial Government] may also, by noti-
 fication in the ²[*Official Gazette*], extend the prohibi-
 tion contained in this section to any class of persons,
 Natives of the said districts, and may from time to time
 in like manner cancel or vary such extension.

8 to 10. [*Killing or capturing elephants.*] *Rep.*
by Reg. 1 of 1880.

11. Offences against this Regulation may be tried
 by Magistrates of the first or second class, and shall
 be bailable.

Jurisdiction
 as to

¹See foot-note 4 on p. 927, *ante*.

²These words were substituted for the words "*Caldcutt Gazette*"
 by paragraph 4(1) of the Government of India (Adaptation of
 Indian Laws) Order, 1937.

Regulation III of 1881.

(The Chittagong Hill-Tracts Frontier Police Regulation, 1881.)¹

(7th December 1881.)

The Chittagong Hill-tracts Frontier Police Regulation, 1881.

Whether the Frontier Police of the Hill-tracts of Chittagong enrolled under Act No. V of 1861² (*for the regulation of Police*) perform services of a quasi-military character; and whereas the provisions of the said Act, and the orders and rules framed under section 1 thereof, have been found insufficient for the maintenance of discipline among such police, and it is therefore expedient to make further provision for the maintenance of discipline among them; It is hereby enacted as follows:—

Preamble.

1. This Regulation may be called the Chittagong Hill-tracts Frontier Police Regulation, 1881.

Short title.

It applies to all persons now or hereafter appointed under the said Act No. V of 1861² to be Frontier Police-officers and posted to the Hill-tracts of Chittagong.

Local extent.

[Commencement.] Rep. by the Amending Act, 1903 (I of 1903).

2. In this Regulation, unless there is something repugnant in the subject or context,—

Interpretation-clause.

“active service” means service at the frontier outposts or against hostile tribes or other persons in the field;

“active service”;

³[“Superintendent”] and “District Superintendent” mean the ³[Superintendent] of the Hill-tracts of Chittagong and the District Superintendent of Police within the same tracts, respectively; and

“Superintendent” and “District Superintendent”;

the expressions “reason to believe”, “criminal force”, “assault” and “fraudulently” have the meanings assigned to them respectively in the Indian Penal Code.

“reason to believe”, “criminal force”, “assault” and “fraudulently”.

Act XLV of 1860.

¹LOCAL EXTENT.—This Regulation extends only to the Chittagong Hill-tracts—see s. 1. It is formally included in the schedule of laws in force in those tracts—see the Chittagong Hill-tracts Regulation, 1900 (1 of 1900). For power to define the boundaries of the tracts, see the Chittagong Hill-tracts Regulation, 1900 (1 of 1900) s. 2 (2).

²The Police Act, 1861.

³This word was substituted for the words “Deputy Commissioner” by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900).

(Sec. 3.)

More heinous offences.

3. Any person subject to this Regulation, not being above the rank of *subadâr*, who—

- (a) begins, excites, causes or joins in any mutiny or sedition, or, being present at any mutiny or sedition, does not use his utmost endeavours to suppress the same, or, knowing or having reason to believe in the existence of any mutiny, or of any intention to mutiny, does not without delay give information thereof to his commanding or other superior officer; or
- (b) uses or attempts to use, criminal force to, or commits an assault on, his superior officer, whether on or off duty, under any circumstances in which the superior officer is distinguishable as such in any manner; or
- (c) shamefully abandons or delivers up any garrison, fortress, post or guard committed to his charge, or which it is his duty to defend; or
- (d) directly or indirectly holds correspondence with, or assists or relieves, any persons in arms against the State, or omits to discover immediately to his commanding or other superior officer any such correspondence coming to his knowledge; and

any such person who, while on active service,—

- (e) disobeys the lawful command of his superior officer; or
- (f) deserts the service; or,
- (g) being a sentry, sleeps upon his post, or quits it without being regularly relieved or without leave; or
- (h) without authority, leaves his commanding officer, or his post or party, to go in search of plunder; or
- (i) quits his guard, picquet party or patrol without being regularly relieved or without leave; or
- (j) uses criminal force to, or commits an assault on, any person bringing provisions or other necessities to camp or quarters, or forces a safeguard, or without authority breaks into any house or any other place, for plunder, or plunders, destroys or damages any field, garden or other property of any kind; or

of 1881.]

(*Sec. 4.*)

(*k*) intentionally causes or spreads a false alarm in action, camp, garrison or quarters,

shall be punished with transportation for life or for a term of not less than seven years, or with imprisonment, with or without hard labour, for a term which may extend to fourteen years.

4. Any person subject to this Regulation, not being above the rank of *subadár*, who— Less heinous offences.

- (*a*) is in state of intoxication when on or for any duty, or on parade or on the line of march; or
- (*b*) strikes or attempts to force any sentry; or
- (*c*) being in command of a guard, picquet or patrol, refuses to receive any prisoner duly committed to his charge, or without proper authority releases any prisoner or negligently suffers any prisoner to escape; or
- (*d*) being under arrest or in confinement, leaves his arrest or confinement before he is set at liberty by proper authority; or
- (*e*) is grossly insubordinate or insolent to his superior officer in the execution of his office; or
- (*f*) refuses to superintend or assist in the making of any field-work or other military work of any description ordered to be made either in quarters or in the field; or
- (*g*) strikes or otherwise ill-uses any person subject to this Regulation being his subordinate in rank or position; or
- (*h*) being in command at any post on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has committed any riot or trespass, fails to have due reparation made to the injured person, or to report the case to the proper authority; or
- (*i*) designedly or through neglect injures or loses or fraudulently disposes of, his arms, clothes, tools, equipments, ammunition, accoutrements or regimental necessaries, or any such articles entrusted to him or belonging to any other person; or
- (*j*) malingers, feigns or produces disease or infirmity in himself, or intentionally delays his cure, or aggravates his disease or infirmity; or

(Secs. 5, 6.)

(*k*) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person; and any such person who, while not on active service,—

(*l*) disobeys the lawful orders of his superior officer; or

(*m*) plunders, destroys or damages any field, garden or other property; or

(*n*) being a sentry, sleeps upon his post, or quits it without being regularly relieved, or without leave,

shall be punished with imprisonment, with or without hard labour, which may extend to one year.

**Corporal
punishment.**

5. Any person subject to this Regulation, not being above the rank of *havildar*, who, while on active service, commits any of the offences specified in section 3, or in section 4, clauses (*a*) to (*k*), both inclusive, may, in lieu of or in addition to any punishment to which he is liable under those sections be punished with whipping.

In no case, if the cat-of-nine-tails be the instrument employed, shall the punishment of whipping exceed fifty lashes, or, if the ratan be employed, shall the punishment exceed thirty stripes.

**Minor
punishment.**

6. In addition to the powers conferred upon them by the rules made under section 12 of the said Act No. V of 1861¹ the ²[Superintendent], the District Superintendent, or an Assistant District Superintendent of Police in command of a detachment, may, without a formal trial, award to any person subject to his authority and to whom this Act applies the following punishments for the commission of petty offences against discipline which are not otherwise provided for or which are not of a sufficiently serious nature to call for a prosecution before a Criminal Court (that is to say):—

(*a*) imprisonment to the extent of seven days in the quarter-guard, or such other place in or near the lines as may be considered suitable, with forfeitures of all pay and allowances during its continuance,

¹The Police Act, 1861.

²This word was substituted for the words "Deputy Commissioner" by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900).

of 1881.]

(Secs. 7—9.)

- (b) punishment-drill, extraguard, fatigue or other duty, not exceeding thirty days in duration, with or without confinement to lines.

Any of these punishments may be awarded separately or in combination with the others.

7. Any person sentenced under this Regulation to imprisonment for a period not exceeding three months shall, when also dismissed the service, be imprisoned in the nearest jail; but, when not also dismissed the service, he may, at the discretion of the convicting officer, subject to revision by the ¹[Superintendent], be confined in the quarter-guard or such other place as such officer may consider suitable.

Where person sentenced to imprisonment to be confined.

8. Nothing in this Regulation shall prevent any person from being prosecuted under the said Act No. V of 1861² or any order or rule framed thereunder, or under any other enactment for the time being in force, for any act or omission punishable hereunder, or from being liable under any other enactment to any other or higher penalty than is provided for such act or omission by this Regulation :

Prosecution, etc., under other enactments.

Provided that no person shall be punished twice for the same offence.

9. Nothing contained in the said Act No. V of 1861² shall be deemed to prevent the ³[Provincial Government] from investing any police-officer with the powers of a Magistrate for the purpose of inquiring into or trying any offence committed by a police-officer and punishable under the said Act or this Regulation.

Magisterial powers of police-officers.

¹See foot-note 2 on p. 932, *ante*.

²The Police Act, 1861.

³These words were substituted for the words "Local Government" by paragraph 4 (I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Regulation I of 1900.

THE CHITTAGONG HILL-TRACTS REGULATION, 1900.

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Regulation I of 1900.

(The Chittagong Hill-tracts Regulation, 1900.)

(17th January 1900).-

A Regulation to declare the law applicable in, and provide for the administration of, the Chittagong Hill-tracts in Bengal.

Whereas it is expedient to declare the law applicable in, and provide for the administration of, the Chittagong Hill-tracts in Bengal; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Regulation may be called the Chittagong Hill-tracts Regulation, 1900. Short title, extent and commencement.
- (2) It extends to the Chittagong Hill-tracts; and
- (3) It shall come into force on the 1st day of January 1900.

Page 937—

For section 2 substitute the following:—

“2. In this Regulation—

Definitions.

- (a) the expression ‘Chittagong Hill-tracts’ means the area known by that name as existing on the first day of January 1936; and
- (b) ‘Commissioner’ means the Commissioner of the Chittagong Division.”

(Substituted by Ben. Reg. I of 1939, section 2.)

[No. 1, dated the 15th September, 1939.]

LOCAL EXTENT.

¹LOCAL EXTENT.—This Regulation extends only to the Chittagong Hill-tracts—see s. 1(2).

²The 1st May 1900—see *Calcutta Gazette*, 1900, Pt. I, p. 350.

³These words were substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words “*Calcutta Gazette*” *ibid.*

⁵These words were substituted for the words “Local Government may” by Sch. XI, *ibid.*

⁶The words “with the previous sanction of the Governor General in Council” were omitted by the Devolution Act, 1920 (XXXVIII of 1920).

[Reg. I

(Chapter II.—Laws.—Secs. 3, 4.)

CHAPTER II.

LAWS.

Chittagong
Hill-tracts
how to be
administered.

3. Subject to the provisions of this Regulation, the administration of the Chittagong Hill-tracts shall be carried on in accordance with the rules for the time being in force under section 18.

Enactments
applicable in
Chittagong
Hill-tracts.

4. (1) The enactments specified in the schedule, to the extent and with the modifications therein set forth and so far as they are not inconsistent with this Regulation or the rules for the time being in force thereunder, are hereby declared to be in force in the Chittagong Hill-tracts.

(2) No other enactment heretofore or hereafter passed shall be deemed to apply in the Chittagong Hill-tracts:

Provided that the ¹[Provincial Government] may,
* * * * * by notification in the ³[*Official Gazette*],—

(a) declare that any other enactment shall apply in the said tracts, either wholly or to the extent or with the modifications which may be set forth in the notification; or

(b) declare that any enactment which is specified in the schedule, or which has been declared to apply by a notification under clause (a) of this sub-section, shall cease to apply in the said tracts.

⁴Provided further that no such declaration shall be made after the commencement of Part III of the Government of India Act, 1935.

26 Geo. V,
ch. 2.

¹See foot-note 3 on p. 937, *ante*.

²The words "with the previous sanction of the Governor General in Council" were omitted by the Devolution Act, 1920 (XXXVIII of 1920).

³See foot-note 4 on p. 937, *ante*.

⁴This proviso was inserted by Sch. XI of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1900.]

(Chapter III.—Appointment and Powers of certain Officers.—Secs. 5-8.)

CHAPTER III.

APPOINTMENT AND POWERS OF CERTAIN OFFICERS.

5. The ¹[Provincial Government] may, by notification in the ²[*Official Gazette*],—

Appointment of Deputy Commissioner and subordinate officers.

(a) appoint any person to be the ³[Deputy Commissioner] of the Chittagong Hill-tracts; and (b) appoint so many ⁴[Deputy Magistrate and Deputy Collectors] and other officers as it thinks fit to assist in the administration of the said tracts.

6. The ¹[Provincial Government] may, by notification in the ²[*Official Gazette*], invest any ⁵[Deputy Magistrate and Deputy Collector or Sub-Deputy Magistrate and Sub-Deputy Collector] with all or any of the powers of the ³[Deputy Commissioner] under this Regulation or the rules for the time being in force thereunder, and define the local limits of his jurisdiction.

Investments of Deputy Magistrates and Deputy Collectors with powers of Deputy Commissioner.

7. The Chittagong Hill-tracts shall constitute a district for the purposes of criminal and civil jurisdiction and for revenue and general purpose, the ³[Deputy Commissioner] shall be the District Magistrate, and, subject to any orders passed by the ¹[Provincial Government] under section 6, the general administration of the said Tracts, in criminal, civil, revenue and all other matters, shall be vested in the ³[Deputy Commissioner].

Chittagong Hill-tracts to be a district under the Deputy Commissioner.

8. (1) The Chittagong Hill-tracts shall constitute a sessions division, and the Commissioner shall be the Sessions Judge.

Chittagong Hill-tracts to be a sessions division under the Commissioner.

(2) As Sessions Judge the Commissioner may take cognizance of any offence as a Court of original jurisdiction, without the accused being committed to him

¹See foot-note 3 on p. 937, *ante*.

²See foot-note 4 on p. 937, *ante*.

³These words were substituted for the word "Superintendent" by s. 2 of the Chittagong Hill-tracts (Amendment) Regulation, 1920. (Reg. IV of 1920).

⁴These words were substituted for the words "Assistant Superintendent" by s. 3, *ibid*.

⁵These words were substituted for the words "Assistant Superintendent" by s. 4, *ibid*.

[Reg. I

(Chapter III.—Appointment and Powers of certain Officers.—Chapter IV.—Arms, Ammunition, Drugs and Liquor.—Secs. 9-11.)

by a Magistrate for trial, and, when so taking cognizance, shall follow the procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant-cases by Magistrates. Act V of 1898.

High Court.

9. The ¹[Provincial Government] shall exercise the powers of a High Court for the purpose of the submission of sentences of death for confirmation under the Code of Criminal Procedure, 1898, and the Commissioner shall exercise the powers of a High Court for all other purposes of the said Code.

Power to withdraw cases.

10. The ²[Deputy Commissioner] may withdraw any criminal or civil case pending before any officer or Court in the Chittagong Hill-tracts, and may either try it himself or refer it for trial to some other officer or Court.

CHAPTER IV.

ARMS, AMMUNITION, DRUGS AND LIQUOR.

Possession of firearms and ammunition and manufacture of gunpowder.

11. (1) The ²[Deputy Commissioner] may fix the number of firearms and the quantity and description of ammunition which may be possessed by the inhabitants of any village, and may grant permission, either to such inhabitants collectively or to any of them individually, to possess such firearms and ammunition as he may think fit.

(2) All firearms for the possession of which permission is given under sub-section (1), shall be marked and entered in a register.

(3) Any permission granted under sub-section (1) to possess firearms and ammunition may be withdrawn by the ²[Deputy Commissioner], and thereupon all firearms and ammunition referred to in such permission shall be delivered to the ²[Deputy Commissioner] or one of his subordinates.

(4) The ²[Deputy Commissioner] may grant permission to any person to manufacture gunpowder, and may withdraw such permission.

¹See foot-note 3 on p. 937, ante.

²These words were substituted for the word "Superintendent" by s. 2 of the Chittagong Hill-tracts (Amendment) Regulation, 1920 (Reg. IV of 1920).

of 1900.]

(Chapter IV.—Arms, Ammunition, Drugs and Liquor.—
Secs. 12, 13.)

(5) Whoever, without the permission of the ¹[Deputy Commissioner], possesses or exports from the Chittagong Hill-tracts any firearms or ammunition, or manufactures any gunpowder, shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(6) The ¹[Deputy Commissioner] may, with the previous sanction of the ²[Central Government], by order in writing, direct that sub-sections (1), (2), (4) and (5), or any of them, shall not apply in any village specified in the order.

12. (1) The ¹[Deputy Commissioner] may, with the previous sanction of the Commissioner, by order in writing, prohibit all or any of the inhabitants of any village from carrying *daos*, spears and bows and arrows, or any of those weapons, in any tract to be defined in the order, if he is of opinion that such prohibition is necessary to the peace of such tract.

*Daos, spears
and bows and
arrows.*

(2) Every order made under sub-section (1) shall specify the length of time during which it shall remain in force.

(3) Whoever disobeys an order made under sub-section (1) shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

13. (1) Whoever, except under and in accordance with a license granted by the ¹[Deputy Commissioner], imports, exports, manufactures, possesses or sells opium, *ganja* or *charas*, or any preparation thereof, or cultivates any plant from which opium, *ganja* or *charas* can be produced, shall be punishable with imprisonment for a term which may extend to ³[two years in the case of a person who has not been previously convicted of an offence under this section or to five years in the case of a person who has been so convicted, or with fine or with both, and shall also be punishable with whipping in lieu of, or in addition to any of the above punishments.]

*Intoxicating
drugs.*

¹These words were substituted for the word "Superintendent" by s. 2 of the Chittagong Hill-tracts (Amendment) Regulation, 1920 (Reg. IV of 1920).

²These words were substituted for the words "Local Government" by Sch. XI of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "six months, or with fine, or with both" by s. 2(a) of the Chittagong Hill-tracts (Amendment) Regulation, 1937 (Ben. Reg. I of 1937).

(Chapter IV—Arms, Ammunition, Drugs and Liquor.—
Secs 14, 15.)

¹(2) Notwithstanding anything contained in sub-section (1) any person may without a license granted by the Deputy Commissioner—

- (a) possess, for domestic use, one *tola* of *charas*, or of any preparation thereof or three *tolas* of *ganja* or of any preparation thereof; and
- (b) if such person is registered under the provisions of the rules made under this Regulation as a habitual consumer of opium, possess such amount of opium or of any preparation thereof not exceeding five *tolas* in weight as he may be allowed to have in his possession at one time under the said rules.

Foreign spirit
and fermented
liquor.

14. (1) Whoever, except under and in accordance with a license granted by the ²[Deputy Commissioner], imports or sells foreign spirit or fermented liquor, shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.

(2) Nothing in this section applies—

- (a) to the import by any person, for his private use and consumption, and not for sale, of any foreign spirit or fermented liquor on which duty has been paid; or
- (b) to the sale of any such spirit or liquor legally procured by any person for his private use and consumption and sold by him, or by auction on his behalf, or on behalf of his representatives in interest, upon his quitting station or after his decease.

Explanation.—For the purposes of this section, the expression “foreign spirit or fermented liquor” means any spirit or fermented liquor not manufactured or produced in the Chittagong Hill-tracts.

Locally made
spirit and
fermented
liquor.

15. Whoever, except under and in accordance with a license granted by the ²[Deputy Commissioner], exports or sells spirit or fermented liquor manufactured or produced in the Chittagong Hill-tracts, shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.

¹Sub-section (2) was substituted for the original sub-section (2) by s. 2(b) of the Chittagong Hill-tracts (Amendment) Regulation, 1937 Ben. Reg. I of 1937.)

²These words were substituted for the word “Superintendent” by s. 2 of the Chittagong Hill-tracts (Amendment) Regulation, 1920 (Reg. IV of 1920.)

(Chapter V.—Miscellaneous.—Secs. 16-18.)

CHAPTER V.

MISCELLANEOUS.

16. The Chittagong Hill-tracts shall be deemed to be a general police-district within the meaning of the Police Act, 1861, and Bengal Act VII of 1869 (an Act to amend the constitution of the Police force in Bengal,) and the Commissioner shall exercise therein

Page 943—

In section 16, for the words, figures and brackets "Bengal Act VII of 1869 (an Act to amend the constitution of the Police Force in Bengal)", substitute the words and figures "the Bengal Police Act, 1861".
(Substituted by Bengal Act XVI of 1946, section 2 and the First Schedule.)

[No. 41, dated the 22nd July, 1947.]

under this Regulation by the Deputy Commissioner or by any other officer in the Chittagong Hill-tracts.
(3) The [Provincial Government] may revise any order made under this Regulation.

Page 943—

VOLUME I.

After clause (d) of sub-section (2) of section 18 insert the following clause:—

to
rules.

"(dd) provide for the control of money-lenders and the regulation and control of money-lending in the said Tracts;"

(Inserted by Bengal Regulation II of 1942, section 2.)

[No. 19, dated the 20th April 1942.]

- (d) regulate or restrict the transfer of land in the said Tracts;
- (e) provide for the sub-division of the said Tracts into circles, [and those circles] into mauzas;

¹See foot-note 2 on p. 942, ante.

²These words were substituted for the words "an Assistant Superintendent" by s. 5 of the Chittagong Hill-tracts Amendment Regulation, 1920 (Reg. IV of 1920.)

³See foot-note 3 on p. 937, ante.

⁴These words were substituted for the words "those circles into taluks and those taluks" by s. 2(a) of the Chittagong Hill-tracts (Amendment) Regulation, 1925 (Reg. IV of 1925).

(Chapter V.—Miscellaneous.—Secs. 18.)

- (f) provide for the collection of the rent and the administration of the revenue generally in the said circles, ^{1*} and *mauzas* through the chiefs, ^{1*} and headmen;
- (g) define the powers and jurisdiction of the Chiefs, ^{1*} and headmen, and regulate the exercise by them of such powers and jurisdiction;
- (h) regulate the appointment and dismissal of ^{2* *} headmen;
- (i) provide for the remuneration of chiefs ^{1*} and headmen.

VOLUME I.

Page 944—

After clause (k) of sub-section (2) of section 18 insert the following clause, namely:—

“(kk) provide for compulsory vaccination in the said tracts;”.

(Inserted by Ben. Regn. No. I of 1945, section 2.)

[No. 38, dated the 6th December, 1945.]

- ³(ll) provide for the registration of persons who are habitual consumers of opium in the said Tracts; and
- (m) regulate the procedure to be observed by officers acting under this Regulation or the rules for the time being in force thereunder.

(3) All rules made by the “[Provincial Government] under this section shall be published in the “[*Official Gazette*] and on such publication, shall have effect as if enacted by this Regulation.

⁴(4) The powers conferred by this section on the Provincial Government shall be powers of the Central

¹The words “*taluks*” and “*diwans*” were omitted by s. 2(b) of the Chittagong Hill-tracts (Amendment) Regulation, 1925 (Reg. IV of 1925).

²The words “*diwans* and” were omitted by s. 2(d), *ibid*.

³The word “and” was omitted and clause (ll) was inserted by s. 3 of the Chittagong Hill-tracts (Amendment) Regulation, 1937 (Ben. Reg. I of 1937.)

⁴See foot-note 3 on p. 937, *ante*.

⁵See foot-note 4 on p. 937, *ante*.

⁶Sub-section (4) was inserted by Sch. XI of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1900.]

(Chapter V.—Miscellaneous.—Secs. 19, 20.)

Government as respects rules for the regulation of the following matters, namely—

- (a) the possession of fire-arms and ammunition and the manufacture of gunpowder;
- (b) the cultivation, manufacture and sale for export of opium; and
- (c) the import or export across customs frontiers, as defined by the Central Government, of any intoxicating drug or foreign spirit or fermented liquor.

19. Except as provided in this regulation or in any other enactment for the time being in force, a decision passed, act done or order made under this Regulation or the rules thereunder, shall not be called in question in any Civil or Criminal Court.

As to juris-
diction of
Civil and
Criminal
Courts.

20. [*Repeal of certain enactments.*] Rep. by the Amending Act, 1903 (I of 1903).

(The Schedule.)

THE SCHEDULE.

(See Section 4.)

ENACTMENTS DECLARED IN FORCE IN THE CHITTAGONG HILL-TRACTS.

Year.	Number.	Short title or subject.	Extent of application.	Modifications.
1	2	3	4	5
1.—ACTS OF THE GOVERNOR GENERAL IN COUNCIL				
1843	V	.. The Indian Slavery Act, 1843.	So much as may, from time to time, be in force in the district of Chittagong.	
1850	XVIII	.. The Judicial Officers Protection Act, 1850.	Ditto.	
..	XXXIV	.. The State Prisoners Act, 1850.	Ditto.	
1857	XI	.. The State Offences Act, 1857.	Ditto.	
1858	III	.. The State Prisoners Act, 1858.	Ditto.	
1860	XLV	.. The Indian Penal Code.	Ditto.	
1861	V	.. The Police Act, 1861	Ditto.	
1864	VI	.. The Whipping Act. 1864.	Ditto	For section 6 the following shall be substituted, namely :— “6. Notwithstanding Whipping any in lieu of, or thing in addition to, other in the punishment. foregoing sections, a person convicted of any offence may be punished with whipping in lieu of, or in addition to, any other punishment to which he may be liable.”
1872	I	.. The Indian Evidence Act, 1872.	Ditto.	

of 1900.]

(The Schedule.)

THE SCHEDULE—*contd.*ENACTMENTS DECLARED IN FORCE IN THE CHITTAGONG HILL-TRACTS—*contd.*

Year	No.	Short title or subject.	Extent of application.	Modifications.
1	2	3	4	

1.—ACTS OF THE GOVERNOR GENERAL IN COUNCIL—*contd.*

1877	XV	The Indian Limitation Act, 1877.	So much as may, from time to time, be in force in the district of Chittagong.	
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Volume I.

Page 947—

In the Schedule, omit all the entries relating to the Indian Forest Act, 1878.

VII of 1878.

(Omitted by Bengal Regulation V of 1942, section 4.)

[No. 22, dated the 4th July 1942.]

In column 5 of the Schedule against the entry relating to the Indian Post Office Act, 1898, insert the following:—

“1A. [(1) The proviso to sub-section (1) of section 7 and the First Schedule shall be omitted.

(2) For sub-section (2), of section 7, the following shall be substituted, namely:—

“(2) unless and until such notification as aforesaid is issued the rates chargeable for the time being in the rest of British India shall be the rates chargeable in the Chittagong Hill-tracts.’”

the Code
to cases
of chiefs,
men in
the powers
on them
de under
of this

(Inserted by Bengal Regulation II of 1942, section 3.)

[No. 19, dated the 20th April 1942.]

of Chittagong.

1899

The Bengal General
Clauses Act, 1899.

Ditto.

Page 947—

After foot-note 1 insert the following foot-note:—

“1A. This entry inserted by section 3 of the Bengal the Eastern Regulation II of 1942 shall be deemed always to have been inserted.”

[No. 19, dated the 20th April 1942.]

(The Schedule.)

THE SCHEDULE—*concl'd.*ENACTMENTS DECLARED IN FORCE IN THE CHITTAGONG HILL-TRACTS—*concl'd.*

Year	No.	Short title or subject.	Extent of application.	Modifications.
1	2	3	4	5

3.—REGULATION OF THE BENGAL CODE.

1818	III	The Bengal State Prisoners Regulation, 1818.	So much as may, from time to time, be in force in the district of Chittagong.	
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4.—REGULATION MADE UNDER THE GOVERNMENT OF INDIA ACT, 1870 (33 VICT., c. 3.)

1881	III	The Chittagong Hill-tracts Frontier Police Regulation, 1881.	1* * * * *
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¹The entry in column 5 was omitted by s. 6 of the Chittagong Hill-tracts (Amendment) Regulation, 1920 (Reg. IV of 1920).

(b).—*Regulations made under the Government of India Act, 1935, in force in the Province of Bengal.*

Bengal Regulation No. II of 1937.

(The Chittagong Hill-tracts Laws Regulation, 1937.)

(30th September 1937.)

A Regulation to declare the Indian Income Tax Act, 1922, applicable in the Chittagong Hill-tracts.

**XI of
1922.**

WHEREAS it is expedient to declare the Indian Income Tax Act, 1922, applicable to all persons in the Chittagong Hill-tracts except the indigenous hill men;

It is hereby enacted as follows:—

1. (1) This Regulation may be called the Chittagong Hill-tracts Laws Regulation, 1937. Short title and commencement.

(2) It shall come into force on the first day of October 1937.

2. The Indian Income Tax Act, 1922, shall apply to all persons in the Chittagong Hill-tracts except the indigenous hill men. Application of the Indian Income Tax Act, 1922, in the Chittagong Hill-tracts.

Bengal Regulation No. III of 1937.

(The Chittagong Hill-tracts Laws (No. II) Regulation, 1937.)

(16th December 1937.)

A REGULATION TO APPLY THE COURT-FEES ACT, 1870 TO THE CHITTAGONG HILL-TRACTS.

VII of
1870.

WHEREAS it is expedient to apply the provisions of the Court-fees Act, 1870 to the Chittagong Hill-tracts to the extent hereinafter specified:

It is hereby enacted as follows:—

1. This Regulation may be called the Chittagong Hill-tracts Laws (No. II) Regulation, 1937. Short title.

Reg. I of
1900.

2. The Court-fees Act, 1870, as modified in its application to Bengal and in so far as it is not inconsistent with the Chittagong Hill-tracts Regulation, 1900 or with any rules made thereunder for the time being in force, shall apply in the Chittagong Hill-tracts: Application of Act VII of 1870 to the Chittagong Hill-tracts.

Provided that no such rule shall increase the rate of any fees payable under the said Act.

Page 951—

Strike out section 3 and insert the following note, namely:—
(Repealed by Bengal Act XVI of 1946, section 3 and the Second Schedule.)

[No. 41, dated the 22nd July, 1947.]

Bengal Regulation No. I of 1938.

(The Chittagong Hill-Tracts Loans Regulation, 1938.)

(2nd February 1939.)

A REGULATION TO PROVIDE FOR THE GRANT OF LOANS FOR THE RELIEF OF DISTRESS AND IMPROVEMENT OF LANDS IN THE CHITTAGONG HILL-TRACTS.

WHEREAS it is expedient to provide for the grant of loans for the relief of distress and improvement of lands in the Chittagong Hill-tracts ;

It is hereby enacted as follows :—

1. (1) This Regulation may be called the Chittagong Hill-tracts Loans Regulation, 1938. Short title, extent and commencement.

(2) It extends to the Chittagong Hill-tracts.

(3) It shall come into force on such date as the Governor may, by notification in the *Official Gazette*, appoint.

2. In this Regulation, unless there is anything repugnant in the subject or context, “improvement” means any work which adds to the letting value of land and includes the following, namely :— Definition.

- (a) the construction of dams, wells, tanks and other works or the installation of machinery for storage, supply or distribution of water for the purpose of agriculture,
- (b) the drainage, reclamation from rivers or other waters, or protection from floods, of land used for agricultural purposes,
- (c) such other works as the Governor may, from time to time, by notification in the *Official Gazette*, declare to be improvements for the purposes of this Regulation.

3. The Governor may make rules as to loans to be made Power to make rules.

- (a) for the purpose of the relief of distress or the purchase of seed or cattle, to permanent residents of the Chittagong Hill-tracts, or
- (b) for the purpose of making any improvement, to any person having a right to make that improvement, or, with the consent of that person, to any other person.

(Sections 4, 5.)

Recovery of
loans.

4. Every loan made in accordance with the rules made under section 3, all interest (if any) chargeable thereon, and costs (if any) incurred in making or recovering the same, shall, when they become due, be recoverable from the person to whom the loan was made, or from any person who has become surety for the repayment thereof, as if they were arrears of land revenue.

Liability of
joint borrowers
as among
themselves.

5. When a loan is made under this Regulation to the members of a village community or to any other persons on such terms that all of them are jointly and severally bound to the Provincial Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of the amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed, marked, or sealed by each of them or his agent duly authorised in this behalf and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute.

